



Kenya

Country Reports on Human Rights Practices - [2002](#)

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Kenya is a republic dominated by a strong presidency. On December 27, Mwai Kibaki of the opposition National Rainbow Coalition (NARC) was elected as the country's third president winning 61 percent of the vote, and was sworn in on December 30. Former President Daniel Arap Moi, who led the former ruling Kenya African National Union (KANU) and served as President since 1978, stepped down in December at the end of his constitutionally mandated term. Five presidential candidates contested the elections, but the main contestants were KANU candidate Uhuru Kenyatta and Kibaki, a former Vice-President and Minister of Finance in the Moi government. NARC is a coalition of more than a dozen political parties, including former members of KANU who defected from that party late in the year. There were incidents of violence in the preelection period and on election day; however, the elections generally were peaceful. Since independence in 1963, KANU had controlled both the Presidency and the Parliament continuously; other parties were illegal only from 1982 to 1991. During the December general elections, KANU lost its majority in parliament to NARC, in addition to losing the presidency. Observers concluded that the elections broadly reflected the popular will and were free and fair. At year's end, NARC held 133 parliamentary seats and KANU held 67 seats in the 222-seat unicameral National Assembly. In addition to his role as President, Kibaki is the commander-in-chief of the armed forces. The judiciary suffered from corruption and was subject to executive branch influence.

In addition to the armed forces, there was a large internal security apparatus that included the police's Criminal Investigation Department (CID), the National Security Intelligence Service (NSIS), the National Police, the Administration Police, and the paramilitary General Services Unit (GSU), which detailed members on a rotating basis to staff the 700-person Presidential Escort. The CID investigated criminal activity and the NSIS collected intelligence and monitored persons who the State considered subversive. To improve the accountability of investigative services, arrest authority was removed from the NSIS and the organization was separated from the CID. While civilian authorities generally maintained effective control of the security forces, there were some instances in which the security forces acted independent of government authority. Members of the security forces, especially the police, continued to commit numerous, serious human rights abuses.

The economy is market-based and the large agricultural sector employed more than 70 percent of the country's population of approximately 30 million. Estimates for the unemployment rate range from the official 25 percent to more than 50 percent. Although many sectors continued to be dominated by state-owned monopolies, the nonagricultural economy includes large privately owned light manufacturing, commercial, and financial sectors. Tea was the largest source of foreign exchange earnings. Major international financial institutions continued their suspension of financial assistance following the cancellation of anticorruption measures. Annual per capita gross domestic product for 2001 was officially reported as \$300, with approximately 57 percent of the population living at or below the poverty level, on less than \$1 per day. The spread of HIV/AIDS, estimated to have infected approximately 13 percent of the population between the ages of 14 and 49, had increasingly adverse effects on the country's wage-earners, including teachers and other professionals. A weakened infrastructure--unreliable power and telecommunication systems and roads in disrepair--exacerbated economic problems and disinvestment. Also fueling disinvestment were concerns over personal security and uncertainty related to the outcome of the general elections and the associated political transition.

The Government's human rights record remained poor, and it continued to commit numerous, serious abuses. Citizens' ability to change their government peacefully was demonstrated with the inauguration of a new president following the December general elections. Security forces, particularly the police, continued to commit extrajudicial killings, torture and beat detainees, use excessive force, rape, and otherwise abuse persons. Prison conditions remained life threatening. Police harassed and arbitrarily arrested and detained persons, including journalists, politicians, and political activists. The Government arrested and prosecuted a number of police officers for abuses;

however, most police who committed abuses were neither investigated nor punished. Lengthy pretrial detention was a problem, and the judiciary was subject to executive branch influence. The authorities infringed on citizens' privacy rights. The Government limited freedom of speech and of the press, and harassed and intimidated newspapers that often were critical of the Government. The Government repeatedly restricted freedom of assembly, and the police disrupted public meetings and forcibly dispersed demonstrators and protesters. The Government restricted freedom of association. Political intimidation and violence worsened prior to the December general elections. The Government continued to limit the independence of its Standing Committee on Human Rights (SCHR), and the President continued to criticize nongovernmental human rights organizations (NGOs) for their alleged involvement in partisan politics. Violence and discrimination against women and abuse of children remained serious problems. Female genital mutilation (FGM) remained widespread, child prostitution remained a problem, and the spread of HIV/AIDS has orphaned many children. There was some discrimination against persons with disabilities. The Government continued to exacerbate ethnic tensions by discriminating against many ethnic groups; interethnic tensions, often spurred by political competition, continued and resulted in numerous violent conflicts and some deaths. Unlike in previous years, there were no reports of ritual murders associated with aspects of traditional indigenous religious rites. The Government continued to limit some worker rights, including summarily dismissing striking public employees. Child labor remained a problem, and there were instances of forced child labor. Violence by mobs and by nongovernmental armed groups also resulted in many deaths.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Arbitrary or Unlawful Deprivation of Life

Security forces, especially members of the police, the GSU, and the CID, continued to use lethal force and committed a number of extrajudicial killings. The SCHR, the governmental body charged with addressing human rights issues, noted the "widespread use of lethal, excessive, and unnecessary force on civilians by police" in its April general report. The Kenya Human Rights Commission (KHRC), a leading human rights NGO, reported that it has documented more than a thousand cases of extrajudicial killings in the last decade. According to government figures, police killed 117 suspected criminals, and another 11 suspects and detainees died while in police custody during the year. The KHRC reported that police killed 85 persons between January and September. Police often were not restrained in the use of lethal force, especially when confronting armed criminal suspects, and the Government generally failed to take appropriate action against members of the security forces accused of unlawful or arbitrary killings.

Law enforcement officials maintained that security forces were justified in their use of deadly force because of the heavily armed, violent criminals they often encountered. According to the Government, 22 police officers were killed in the line of duty during the year. Police claimed that the increased use of sophisticated weapons by criminals had increased the risks faced by police in performing their duties. In responding to continuing high levels of crime, some police used excessive and deadly force, sometimes without apparent provocation.

On March 12, the KHRC reported that Administration Police officers shot and killed Jacob Odera Ogolla at a bar in Kayole when he was approached by the security agents demanding to know the whereabouts of two persons they said he was seen with at the bar. The officers allegedly shot Ogolla four times in the chest and later dumped his body along the road. No arrests or investigations have been made in this case.

There were incidents in which police killed bystanders. On September 22, police and suspected robbers in Bungoma engaged in a gun battle that resulted in the death of six persons, including two bystanders.

Persons died from torture while in custody (see Section 1.c.).

There were some internal police investigations into the many killings of civilians by members of the security forces and some prosecutions; however, few were effective. The authorities sometimes attributed the absence of an investigation into an alleged extrajudicial killing to the failure of citizens to file official complaints. However, the form required for filing complaints was available only at police stations, which often lacked the forms or were not forthcoming in providing them. There also was considerable public skepticism of a process that assigned the investigation of police abuse to the police themselves. The Police Department reported that 49 police officers were indicted during the year for various offenses, including murder, assault causing bodily harm, and corruption; however, the Government did not provide details on how many of these indicted police officers were tried, acquitted, convicted, or imprisoned.

In January two police officers had their charges reduced to manslaughter in the case of the February 2001 killing of University of Nairobi student Allan Mbiti by three police officers. The other officer was sentenced in December 2001 to 10 years in prison. The case still was pending at year's end.

The investigation into two Administration Police officers accused of the March 2001 killing of Francis Kiraha Kibugi was completed and they were charged with murder; however, it was unknown whether a trial had begun by year's end.

An inquest determined that there was no one to charge for the January 2001 alleged torture and killing of Abdillahi Mohamed Mashuhuri. A police officer was charged for the March 2001 killing of Geoffrey Ngoima Mbugua.

There was no action taken against members of the security forces in the July 2001 killing of seven suspected bank robbers, and the July 2001 killing of a primary school teacher during a fight between Kisii and Maasai youths.

The following cases were pending at year's end: The trial of a police officer in the 1997 killing of Catholic lay brother Larry Timmons; the trial of two police officers charged with manslaughter in 2001 for the May 2000 killings of two suspected carjackers; an inquest into the March 2000 killings of eight suspected carjackers; and an investigation into the January 2000 killing of 5-year-old Chesortich.

Hundreds of prisoners died in custody due to life-threatening prison conditions, including inadequate food and medical treatment (see Section 1.c.). The Government recorded 536 deaths in prisons during the year, and the chief causes of death were attributed to pulmonary tuberculosis, gastroenteritis, pneumonia, and malaria.

In March Mungiki clashed with a rival gang in Nairobi's Kariobangi district where 23 persons were killed. The Mungiki is a small, controversial, cultural, and political movement based in part on Kikuyu ethnic traditions. Its origins may have been rooted in traditional religious and cultural beliefs, but more recently they were perceived widely to be a vigilante group. The Mungiki were involved in or implicated in a number of violent attacks against political or ethnic rivals during the year. On September 22, members of the Mungiki attacked several individuals leaving a rally organized by dissident KANU officials of the "Rainbow Alliance" in Nairobi; two persons reportedly were killed.

Mob violence continued at high levels during the year, which observers believe may have been associated with a continuing high crime rate. According to the Government 95 persons were killed in mob violence during the year. The KHRC reports that it has documented 719 deaths from mob violence in the last 6 years. Human rights observers attributed mob violence to a lack of public confidence in the police and the judicial process. The great majority of mob violence victims, who died by lynching, beating, or burning, were persons suspected of criminal activities, including robbery, cattle rustling, and membership in terror gangs. Most perpetrators of mob violence went unpunished. In addition, the social acceptability of mob violence also provided cover for apparent personal vengeance under the guise of "mob justice."

There were several occurrences of mob violence during the year. For example, on January 5, two individuals suspected of stealing cows were stoned and beaten to death in a village at Njoro in Nakuru. No one was arrested for the crime.

On March 30, a mob killed three brothers for allegedly being involved in multiple incidents of theft and robbery in Limuru, an area on the outskirts of Nairobi. The KHRC reports that a mob-operated court, convened earlier in the day at a shopping center, found the brothers guilty of several crimes. The brothers, taken from their sister's home, were beaten unconscious, doused with gasoline, and burnt alive. No arrests were made in the case.

No known action was taken in the following mob violence cases: The April 2001 deaths of nine persons in a Nairobi slum during clashes between residents and gang members, and the May 2001 stoning death of a person in Kericho District in the Rift Valley.

Occasionally mobs killed members of their communities on suspicion that they practiced witchcraft (see Section 2.c.).

Interethnic violence continued to cause numerous deaths (see Section 5). Some of these disputes spilled over into the country from neighboring countries (see Section 2.d.).

b. Disappearance

There were no reports of politically motivated disappearances.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The Constitution states that "no one shall be subject to torture or degrading punishment or other treatment;" however, security forces continued to use torture and physical violence during interrogation and to punish both pretrial detainees and convicted prisoners. Although authorities periodically issued directives against the use of torture by police, the problem persisted. Human rights organizations, churches, and the press highlighted and criticized numerous cases of torture and several cases of indiscriminate beating of groups of persons by police during the year. Common methods of torture practiced by police included hanging persons upside down for long periods, genital mutilation, electric shocks, and deprivation of air by submersion of the head in water. There were numerous allegations of police use of excessive force and torture. The KHRC believed police brutality was widespread and estimated that there were hundreds of cases during the year. However, detainees routinely claimed that they had been tortured, making it difficult to separate real from fabricated incidents.

The KHRC reported 49 torture-related deaths in 2001, and People against Torture (PAT) reported 70 cases of death by torture and 238 total cases of torture in 2001.

On February 9, Councilor Amos Korichir died from head injuries allegedly inflicted during torture. According to reports from the KHRC, Korichir was taken into police custody following an argument he had with a local trader who reported the incident to the authorities. Two police officers reportedly tortured him for several hours until he became unconscious and then later dumped his body on the roadside where he was discovered and taken to a hospital. The Eastern Provincial Police Officer maintained that Korichir had been released from police custody in good health and died from unknown causes. An inquest was ordered into Korichir's death, and a hearing was pending at year's end.

On March 31, according to NGOs, Paul Kimani Wambiru died after being tortured at the Nyeri Police Station. Wambiru was arrested on March 25 on allegations of stealing approximately \$384; he reportedly was held until March 31, exceeding the 48-hour limit that a person can be held without charge. Wambiru's death was discovered after his father visited the police station on March 31 and was informed by attending officers that his son had died earlier that day after being released from custody for lack of evidence. A postmortem examination revealed that Wambiru died from multiple internal and external injuries, including a ruptured bladder and small intestines. According to the Government, five police officers were charged with Wambiru's murder and the case still was pending in court at year's end.

Police beat journalists during the year (see Section 2.a.).

Police repeatedly used excessive force and beat persons when breaking up demonstrations, student protests, and opposition political party rallies (see Section 2.b.).

In 2000 former President Moi was quoted widely in the press as calling for action against the Mungiki; police forcibly disrupted several of the group's meetings 2001, injuring a number of persons. The Government arrested some Mungiki members during the year (see Section 1.d.).

Security forces continued to commit numerous human rights abuses, often with impunity. According to the SCHR in its 2002 general report, "...disciplinary sanction imposed on officers found guilty of brutality were frequently inadequate. Officers were rarely prosecuted for using excessive force. Investigations by SCHR of numerous cases alleging torture revealed that there was a "Code of Silence" under which officers failed to report brutality, destroyed evidence, or threatened witnesses in an effort to cover-up abuses commanded widespread loyalty, contributing to a climate of impunity." Public officials at times made pronouncements calling on security forces to discharge their duties responsibly and to use restraint; however, such pronouncements had little effect on police behavior.

During the year, the Government investigated some allegations of police use of excessive force and torture, and prosecuted several police officers; some officers were charged, convicted, and sentenced for killings (see Section 1.a.). The Government did not provide information on the number of cases of torture that occurred during the year.

An inquest was pending at year's end into the January injuring of Arwings Odera.

There was no action taken in the 2001 report that prison wardens from King'ong'o prison pulled a murder suspect from his hospital bed and returned him to the prison, where they allegedly beat him unconscious then returned him

to the hospital. The Government denied that such an incident occurred.

According to organizations that work with street children, police also beat and abused street children (see Section 5). In June Mombasa police officers Mwingi Chula and Peter Ndwiga, who were arrested for raping a 13-year-old street girl in May 1999, were acquitted.

In February police officers Charles King'ori and Wilson Kinyanjui from the Makueni Police Station were acquitted of assault in the case of Charles Muteti Mulwa.

Margaret Njeri claimed that police tortured her to extract a confession; police officers allegedly beat her until she bled and sexually abused her. In 2000 Njeri filed a formal complaint to police and said that she intended to sue police for damages; there was no further information on the case at year's end.

In September 2000, a magistrate in Nakuru granted the request of six army officers, Nahashoon Kili, Moses Kiprotich, John Masai, Joseph Tanui, Henry Buienei, and Tito Rono, to pursue charges of torture against members of the 66th Artillery Battalion; the six had been held for 6 months in 2000 on suspicion of mutiny. On February 3 in Eldoret, four of the six officers told journalists that while under military detention, they had their testicles pricked with needles, were beaten, were deprived of food for days, and were doused with cold water while naked. The officers said they were tortured into falsely confessing to having planned a mutiny. In 2001 the Chief Magistrate dismissed the case against the members of the 66th Artillery Battalion for procedural reasons. The army officers appealed the decision; however, there was no further information on the case by year's end.

No known action was taken in the following 2000 cases: The January case of William Tanui; the February beating of Mohammed Sheikh; and the February case of police firing at suspected robbers who were fleeing from police and seriously injuring a teenaged boy.

No known action was taken during the year against police who reportedly used excessive force when breaking up demonstrations, student riots or Mungiki meetings in 2000.

Caning continued to be used as punishment in cases such as rape (see Section 5).

Acts of violence, including rape, banditry, and shootings, occurred frequently near refugee camps (see Sections 2.d. and 5).

There were some violent incidents between progovernment supporters and opposition supporters during the year, mostly during opposition rallies (see Section 2.b.).

Prison conditions were harsh and life threatening, due both to a lack of resources and to the Government's unwillingness to address deficiencies in the penal system. Prisoners were subjected to severe overcrowding, deficient health care, and received inadequate water, diet, and bedding. Police and prison guards subjected prisoners to torture and inhuman treatment (see Section 1.a.). Rape of both male and female inmates, primarily by fellow inmates, was a serious problem, as was the increasing incidence of HIV/AIDS. Prisoners were detained in unsanitary conditions and have inadequate access to medical treatment. As a result, disease was widespread in prisons, and the death rate was high. Only one prison health facility had a resident doctor. The others were staffed by clinical officers or nurses posted from the nearest government hospital. Prisoners sometimes were kept in solitary confinement far longer than the maximum 90 days allowed by law. Prisoners and detainees frequently were denied the right to contact relatives or lawyers. A 2001 Nation newspaper investigative report on prisons nationwide highlighted the difficulty family members had in visiting prisoners, including numerous bureaucratic and physical obstacles, each requiring a bribe.

According to the Government, the country's prisons reportedly held twice their estimated capacity of 16,886 inmates. The Government reported that there were 35,157 prisoners during the year of which nearly 33 percent--13,497 prisoners--were pretrial detainees. The SCHR, the only domestic human rights body allowed such access, produced a special report during the year on its comprehensive investigation into the country's prison system. It asserted that while the prison population has increased steadily over the last several years, prison facilities had not. According to the Government, there were 89 prison facilities. Overcrowding led to health-related problems arising from the sharing of amenities, encouraged the spread of infectious diseases, and resulted in food and water shortages. There was little access to health care and medicine. According to the Government, 536 prisoners died in jails during the year, compared with 464 in 2001. During the year, deaths were due chiefly to tuberculosis, gastroenteritis, pneumonia, and malaria; dysentery, anemia, malaria, heart attack, typhoid fever, and HIV/AIDS were also common causes of death among prisoners.

The SCHR concluded in its 2002 special report on prisons that "Conditions of prison facilities do not meet the minimum accepted standards for the treatment of prisoners. Inmates' human rights and dignity was compromised and eroded in prisons...Torture, cruel, inhuman, and degrading treatment was prevalent in prisons." The SCHR documented numerous cases of human rights abuses alleged by inmates during its investigations. This included reports of prisoners being tortured through the application of electrical shocks to genitalia, inhumane treatment such as subjecting inmates to artificial light from a 150 watt bulb continuously for up to 24 hours, and female inmates being stripped and placed in solitary confinement in a flooded cell for up to a week. In March 2001, the KHRC hosted a public meeting at which former prisoners discussed their experiences while in prison. The former prisoners described prisons as filled with disease, death, corruption, and brutality with guards demanding bribes for the most basic amenities. Press reports continued to highlight the substandard prison conditions.

By most accounts, prisoners received three meals per day; however, the SCHR found that inmates sometimes were given half rations as punishment and at times for the "slightest offence." Most prisoners it interviewed had expressed concerns about both the quantity and quality of food they were given, that it was insufficient and inadequate. According to the SCHR, prison diet consisted "almost entirely of ugali (maize meal), beans, and occasionally cabbages or kale...portions of meat were served in some prisons once or twice a week but in grossly inadequate rations." The SCHR also found water shortages to be a problem in some prisons, particularly at the Kakemaga prison where they have not had running water for the last 5 years. There were no reports during the year of food shortages or that prisoners died from hunger.

Men, women, and children officially were kept in separate cells, and there were no reports that men and women were placed in the same cells. Women sometimes lacked access to sanitary napkins and often had only one change of clothes, leaving them naked during the washing of their laundry. Young teenagers frequently were kept in cells with adults in overcrowded prisons and detention centers. Youth detention centers were understaffed, overcrowded, and inmates had minimal social and exercise time. The SCHR reported in its 2002 special report on juvenile detention centers that it encountered major overcrowding at all of the centers it investigated and found that one in particular, the Nairobi Juvenile Remand Home, held more than 4 times its capacity of 100 detainees. Some young inmates remained in the centers for years, as their cases awaited resolution. Juvenile detainees were subjected to corporal punishment, which has been banned in the schools system. According to the SCHR's 2002 special report on the state of juvenile detention centers, a majority of juveniles in remand were actually "children who have been arrested from the streets as victims of neglect or children in need of care and discipline." The SCHR reported that in 2001, 797 out of 1016 juveniles in detention fell into this category and expressed concern about the cohabitation of such children with juveniles held in detention for more serious offenses. Overall, the SCHR found that the juvenile detention system did not meet the minimum human rights standards for accommodation, facilities, food, or the separation of juveniles based on the offenses they have committed and that no adequate medical care existed in any of the institutions it visited.

Nearly all prisoners serving more than 6 months in prison worked in the prison industries and farms. Men worked in printing services, car repair, tailoring, metal work, and leather and upholstery work. Women were taught sewing, knitting, dressmaking, rug making, basket weaving, jewelry making, and other crafts. The Government reported that prisoners can earn \$0.62 (approximately 48 Kenyan Shillings) per year. Prisoners on good conduct can, with permission, work beyond the 8-hour day to produce goods, from which they earn two-thirds of the profits. Prisons were unable to invest these sizable profits in the prisons because income generated from the sale of prison products was sent directly into the Government Consolidated Fund. Some observers alleged that prison officials used the free prison labor for personal profit and prisoners have complained of being overworked; however, many inmates leave prison with a valid trade certificate.

The courts partly were responsible for overcrowding, as the backlog of cases in the judicial system continued to fill the prison detention cells (see Sections 1.d. and 1.e.). Many detainees spend more than 3 years in prison before their trials were completed, often because they cannot afford even the lowest bail. Very few can afford attorneys.

The Government did not permit consistent independent monitoring of prison conditions. In general the Government did not permit domestic NGOs to visit prisons; however, some independent NGOs worked with the Government in evaluating torture cases and performing autopsies on deceased prisoners. The SCHR had the authority to inspect prison facilities on demand at any time and, during the year, published two reports that examined the state of prisons and juvenile detention centers.

d. Arbitrary Arrest, Detention, or Exile

Despite constitutional protections, police continued to arrest and detain citizens arbitrarily. The Constitution provides that persons arrested or detained be brought before a court within 24 hours in noncapital offenses and within 14 days in capital cases. The Penal Code specifically excludes weekends and holidays from this 14-day

period. The law does not stipulate the period within which the trial of a charged suspect must begin. Indicted suspects often were held for months or years before being brought to court. The Government has acknowledged cases in which persons have been held in pretrial detention for several years. Police from the arresting location were responsible for serving court summons and for picking up detainees from the prison each time the courts heard their cases. Police often failed to show up or lacked the means to transport the detainees, who then must await the next hearing of their case.

The law provides that families and attorneys of persons arrested and charged are allowed access to them, although this right often was not honored (see Section 1.c.). Family members and attorneys may visit prisoners only at the discretion of the authorities. This privilege often was denied. For those who were charged, it often was possible to be released on bail with a bond or other assurance of the suspect's return.

Prison overcrowding was a problem, and the backlog of cases in the judicial system continued to fill the detention sections of prisons (see Section 1.c.).

In 2000 the Government instituted the Community Service Order (CSO), a program whereby petty offenders perform community service rather than serve a custodial sentence. According to the Home Affairs Permanent Secretary, the Government spent \$250,000 (20 million Kenyan shillings) on the CSO in 2000 and \$500,000 (40 million Kenyan shillings) in 2001. According to a March press report, more than 67,000 prisoners were serving sentences under the program, engaged in such activities as building bridges, schools, and hospitals. This was significantly higher than in 2001 when there reportedly were 11,000 petty offenders participating in the program. In May the chairman of the National Committee on Community Service Order, Justice Samuel Oguk, said that magistrates were not fully utilizing CSO as an alternative to custodial sentences for petty offenders, which led to the further congestion of prisons. The program eventually could help alleviate overcrowding; however, there was no indication of any relief by year's end.

Citizens frequently accused police officers of soliciting bribes during searches or falsely arresting individuals to extract bribes (see Section 1.f.). The police continued conduct massive searches ("sweeps") for illegal immigrants and firearms (see Section 1.f.). In June the Nairobi police engaged in several days of sweeps reportedly to ensure that the "city was free of criminals," according to Simeon Kipkeu, the Officer Commanding of the Kasarani Police Division. According to press reports, the operation was a joint General Service Unit and Administration Police effort leading to the arrest of more than 1,000 foreign nationals; however, the Government reported that 835 foreign nationals actually were arrested and that 511 were verified to be in the country illegally and were arraigned in court. The remaining 324 persons were handed over to the U.N. High Commissioner for Refugees (UNHCR). There was no information on whether those arraigned were detained at year's end. The sweeps were conducted primarily in Nairobi's Eastleigh area, home to a large Somali community; residents accused the police of using excessive force and robbing them of cash and other valuables.

On August 21, heavily armed police entered the home of the chairman of the Kenya Employers Federation (KFE), Walter Mukuria, and took him into custody for 4 hours. Mukuria's arrest reportedly was precipitated by an inquiry he made into the ownership of a bank to which a questionable transfer of a substantial amount of worker funds had been made. The transfer was made without the approval of the National Social Security Fund trustees, and Mukuria's inquiry implicated the involvement of a prominent government official. The KFE alleged that Mukuria was denied legal representation following his arrest and was forced to sign a seven-page statement. There was no pending case against Mukuria at year's end.

According to MUHURI, police allegedly detained five colleagues of Abdillahi Mohamed Mashuhuri whom they arrested on narcotics charges after raiding Mashuhuri's house in January 2001. The five were tried and acquitted in March.

The Government at times arrested civil society leaders and opposition politicians and charged them with participating in illegal gatherings (see Sections 2.b. and 4).

In 2001 police beat and arrested James Orengo when he and others went to a proposed rally site in Kisii to notify police of their intent to hold an MWM rally, as required by law. Police prevented Orengo's lawyers from seeing him. Orengo was charged with taking part in an illegal assembly and resisting arrest; he subsequently was released, but his case remained pending before the court at year's end. Orengo has been arrested on questionable charges more than eight times since 1997; many of these cases against Orengo, including one from January 2000, remained pending at year's end.

In February 2001, police forcibly prevented a MWM rally and arrested numerous persons. Also in February 2001,

police arrested another opposition M.P., Peter Anyang' Nyong'o, and four opposition supporters in Kisumu, where MWM also attempted to hold a rally. Anyang' Nyong'o was released; however, it was not known whether the others were released or whether there were any charges pending against Nyong'o and the opposition supporters at year's end.

Unlike in the previous years, there were no reports of Muungano wa Mageuzi (MWM) rallies. The movement since has ceased to exist.

Following an opposition rally in April 2001 that police earlier had attempted to cancel for "security concerns," police arrested two Democratic Party (DP) M.P.s, Maina Kamanda and David Manyara (see Section 2.a.). Kamanda was charged with treason for allegedly threatening the life of President Moi during a speech at the meeting. Kamanda later was released and the treason charge was dropped; however, he was charged with the lesser offense of "incitement," the same charge on which Manyara was arrested a few days later for a speech he gave at the same rally. The Attorney General dropped the prosecution and ended the case against Kamanda by year's end.

In April 2001, police forcibly dispersed a march by Mungiki members; six persons reportedly were arrested, and numerous persons were injured. They were charged, found guilty, and sentenced to pay a fine of \$129 (approximately 10,000 Kenyan shillings) or serve 1 year in prison.

In November 2001, more than 70 members of the Mungiki and Kamjesh groups were arrested for extortion and for seizure of the routes used by privately owned public transportation vehicles, known as matatus. Also in November 2001, police arrested Mungiki leader Ibrahim Waruinge, who previously had announced that Mungiki planned to take over the management of the routes of privately owned transportation vehicles; he was charged with promoting "warlike" activities during a July 2001 clash between Mungiki members and matatu drivers that resulted in five deaths. Waruinge was released on bond. During the year, elements of his group were considered to be in collaboration with the ruling party KANU following the public demonstration some of its members held in Nairobi on August 20 in support of presidential aspirant and Moi protege Uhuru Kenyatta. A number of Mungiki members were arrested following their involvement in the March massacre of residents in a Nairobi slum; 28 members were arrested in Kiambu in July for allegedly circulating pamphlets threatening to circumcise forcibly women; 35 Mungiki suspects were arrested in April following an attack by men believed to be Mungiki at a Nakuru bus terminal that critically injured seven persons, including two police officers; and four Mungiki members were arrested in September for allegedly forcing residents in Laikipia District to take oaths binding them to Mungiki and to support Uhuru Kenyatta, the KANU presidential candidate.

Student protests and riots continued during the year; however, unlike in the previous year, there were no reports that students were arrested as a result.

During the year, police arrested some journalists (see Section 2.a.).

No updates were available in the following 2001 cases: The January case of Arwings Odera, a freelance journalist, charged with publishing false information (see Section 2.a.), and the April case against the owner of Citizen Radio and Television (CITIZEN).

There was no information available in the following cases from 2000: The April arrests of Joseph Kirangathi Njoroge, Esther Wamucii, John Gitonga, and Mwangi Gachie Kamau; the July arrests of 10 Mungiki members; and the December arrest of several journalists during an MWM rally.

Pretrial detention remained a problem. On February 14, after being held in detention since March 2000, Margaret Wanjiku Mugo and her five children were charged with the killing of their husband and father. The family had been scheduled to stand trial in March 2001, but their file went missing. They finally were charged on February 14; the case was pending at year's end. In its 2002 report, the SCHR highlighted numerous cases of lengthy delays in the prosecution of cases against inmates held in remand and noted that "there were unnecessary delays in prosecution of cases," adding that "remand inmates constitute a large percentage of the prison population thereby overstressing the limited resources available to prisons..."

e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary; however, in practice the judiciary often was corrupt and subject to strong influence from the executive branch. The President has extensive powers over appointments, including those of the Attorney General, the Chief Justice, and Appeal and High Court judges. The President also can dismiss judges and the Attorney General upon the recommendation of a special tribunal appointed by the

President. Although judges have life tenure (except for the very few foreign judges who were hired by contract), the President has extensive authority over transfers.

In previous years, judges who ruled against the Government sometimes were punished with transfer or nonrenewal of their contracts; however, no known retaliatory action against judges was reported during the year. Judges occasionally demonstrated independence.

The court system consisted of a Court of Appeals, a High Court, and two levels of magistrate courts, where most criminal and civil cases originated. The Chief Justice was a member of both the Court of Appeals and the High Court, thus undercutting the principle of judicial review. Military personnel were tried by military courts-martial, and verdicts may be appealed through military court channels. The Chief Justice appointed attorneys for military personnel on a case-by-case basis.

The country has Islamic courts that resolve disputes, adjudicate inheritance questions and marital issues, and handle other civil matters where all parties were Muslim and accept the court's jurisdiction. The Constitution provides for these courts, and states that "jurisdiction of a Kadhi's court shall extend to the determination of questions of Muslim law relating to personal status, marriage, divorce, or inheritance in proceedings in which all the parties profess the Muslim religion." The Islamic courts have functioned in the country for many years. There were no other customary or traditional courts in the country. However, the national courts used the customary law of an ethnic group as a guide in civil matters so long as it did not conflict with statutory law. This was done most often in cases that involved marriage, death, and inheritance issues and in which there was an original contract founded in customary law. For example, if a couple married under national law, then their divorce was adjudicated under national law, but if they married under customary law, then their divorce was adjudicated under customary law. Citizens may choose between national and customary law when they enter into marriage or other contracts; however, thereafter the courts determine which kind of law governs the enforcement of the contract. Some women's organizations sought to eliminate customary law because they felt it was biased in favor of men (see Section 5).

Civilians are tried publicly, although some testimony may be given in closed session. The law provides for a presumption of innocence, and for defendants to have the right to attend their trial, to confront witnesses, and to present witnesses and evidence. Civilians also can appeal a verdict to the High Court and ultimately to the Court of Appeals. Judges heard all cases. In treason and murder cases, the deputy registrar of the High Court can appoint three assessors to sit with the High Court judge. The assessors were taken from all walks of life and receive a sitting allowance for the case. Although the assessors render a verdict, their judgment was not binding. Lawyers can object to the appointments of specific assessors.

Defendants do not have the right to government-provided legal counsel, except in capital cases. For lesser charges, free legal aid rarely was available, and then only in Nairobi and other major cities. As a result, poor persons may be convicted for lack of an adequate defense. Although defendants have access to an attorney in advance of trial, defense lawyers do not always have access to government-held evidence. The Government can plead the State Security Secrets Clause as a basis for withholding evidence, and local officials sometimes classified documents to hide the guilt of government officials. Court fees for filing and hearing cases were high for ordinary citizens. The daily rate of at least \$25 (2,000 Kenyan shillings) for arguing a civil case before a judge was beyond the reach of most citizens.

Critics of the Government--politicians, journalists, lawyers, and students--have been harassed through abuse of the legal process. Authorities continued to arrest opposition M.P.s and journalists during the year (see Sections 1.d. and 2.a.), and a number of opposition M.P.s, student leaders, and human rights activists still had one or more court cases pending during the year.

Several cases involving opposition M.P.s have been pending for years, with the courts repeatedly postponing the hearings, thereby requiring the M.P.s to appear periodically in court or risk fines or imprisonment.

The Attorney General's constitutional power to discontinue proceedings in private prosecution cases was a problem. Arguing that citizens must first notify his office before initiating private prosecution, Attorney General Amos Wako has used this authority on a number of occasions to terminate cases against government officials.

There were no reports of political prisoners. However, some NGOs alleged that political and human rights activists were arrested and jailed on spurious charges during the year to curb their activities. The Kenya Human Rights Network (KHRN) reported that on May 19 two human rights activists from Makueni District, Nicodemus Mutuku and Alois Mwaiwa Muia, were arrested on murder charges following mob violence that left one person dead. KHRN

maintained that the two men, who reportedly were engaged actively in land rights issues, were targeted for their activism and wrongfully accused. The Network claimed that the detention of Mutuku and Muia amounted to "detention without trial," since a person accused of murder was not eligible for bond and can be held in prison for up to 6 years while evidence was gathered against them before being brought to trial. KHRN argued that if the Government "is intent on putting someone away for political reasons, all they need to do was to successfully frame him/her up for murder and take years preparing the committal bundle (gathered evidence and other documentation)." Mutuku and Muia were acquitted during the year; however, an appeal of the decision was filed by year's end.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

At times authorities infringed on citizens' privacy rights. Although the Constitution provides that "no person shall be subjected to the search of his person or his property or the entry by others on his premises," it permits searches without warrants "to promote the public benefit." The Police Act permits police to enter a home forcibly if the time required to obtain a search warrant would "prejudice" their investigation. Although security officers generally obtained search warrants, they occasionally conducted searches without warrants to apprehend suspected criminals or to seize property believed to be stolen. Citizens frequently accused police officers of soliciting bribes during searches or of falsely arresting individuals to extract bribes. Unlike in previous years, there were no reports that Nairobi police searched offices of the media without warrants.

On August 21, heavily armed police entered the home of the chairman of the Kenya Employers Federation, Walter Mukuria, and took him into custody for 4 hours (See Section 1.d.).

The police continued to conduct massive warrantless searches ("sweeps") for illegal immigrants and firearms in residential neighborhoods of major cities (see Section 1.d.). Residents complained that police who entered homes on the pretense of searching for weapons often asked for radio, television, and video receipts and permits, then demanded bribes to refrain from confiscating those items in the absence of such documents. In January the police reportedly arrested more than a 100 persons in a sweep of street families and children in Nairobi; their status was unknown at year's end.

Security forces monitored closely the activities of dissidents, following or otherwise harassing them. They employed various means of surveillance, including a network of informants to monitor the activities of opposition politicians and human rights advocates. Some opposition leaders, students, journalists, and others continued to report that the Government subjected them to surveillance and telephone wiretaps; however, there were no reports of interference with written correspondence during the year.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The Constitution provides for freedom of speech and of the press; however, the Government restricted these rights in practice. The Government broadly interpreted existing laws to restrict free expression. The Government continued to harass, beat, and arrest members of the media during the year (see Sections 1.d.). The print media has been relatively independent for decades; there was further liberalization of the electronic media during the year, including radio, television, and Internet communications. The regulatory framework for broadcast media allowed abuse and manipulation in the issuance, withholding, and revoking of broadcast permits and frequencies. Police repeatedly dispersed demonstrators to prevent criticism of the Government, and journalists covering such events often were present during the dispersal (see Section 2.b.). In spite of these pressures, the press, civic organizations, and opposition parties continued to present their views to the public, particularly in the print media. Government pressure led some journalists to practice self-censorship.

In October three police officers were fired for reportedly holding a private political discussion in which it was suggested that the KANU presidential candidate would lose the December elections to the opposition. The officers' comments reportedly were taped and given to senior officers who brought the three before a police disciplinary tribunal. They were found guilty of violating a provision of the Police Act that prohibits affiliating with a political party or group and compromising their political neutrality. The firings were criticized widely as an infringement on the freedom of expression and as an unjust application of the law. Many local officials and other public servants openly affiliated with then ruling KANU and freely attended public rallies and other political functions in support of the party without fear of punishment. In response to negative public reaction following the incident, Police Commissioner Philemon Abong'o told the media that the officers could appeal their dismissal.

In April 2001, President Moi ordered the police to monitor and record all public speeches by politicians at political rallies. The order was regarded widely as an attempt to restrict political speech by threatening to arrest those whose speech could be interpreted by the Government as inflammatory. The order did not appear to be enforced actively during the year.

The Constitution prohibits debates on issues under consideration by the courts, and in conjunction with a ruling by the Speaker of the Assembly that some aspects of the President's conduct were inappropriate topics for parliamentary debate, has limited the scope of deliberation on a number of political issues.

In April 2001, police arrested two DP M.P.s, Maina Kamanda and David Manyara (see Section 1.d.). Kamanda was charged with treason for allegedly threatening the life of President Moi during a speech at the meeting. The Government-controlled Kenya Broadcasting Corporation (KBC) broadcast a video that showed Kamanda saying that President Moi should be shot if he did not leave office after his current term ended; however, a Kenya Television Network (KTN) news video of the same event indicated that the tape shown on KBC had excluded three words. Kamanda actually had said that Kamanda himself should be shot if he (Kamanda) were to agree to another term for Moi.

Public officials used libel laws to attack publications directly critical of actions by government officials. In 2000 a ruling in a libel case involving a government minister ordered that printers and distributors were to be held equally responsible with publishers and authors for libelous content in publications and books. Further interpretation of libel laws and related legislation also has made retail stores equally liable should the material in question be found libelous.

On March 22, Minister for Trade and Industry Nicholas Biwott won a libel suit against The People Daily in the amount of \$250,000 (20 million Kenyan shillings) for implicating him in alleged corrupt dealings involving a hydroelectric project. In June 2001, President Moi and Biwott sued a former U.S. Ambassador accredited to the country and a bookstore that carried the Ambassador's book for libel over allegations in the publication that the President and Biwott were involved in the 1991 murder of Foreign Minister Robert Ouko. In June Biwott won a libel suit against a bookstore for selling the book. The courts granted him \$96,100 (7.5 million Kenyan shillings) in damages and ordered the bookstore's apology printed on the back pages of two of the country's most prominent newspapers. Moi's libel suit against the former Ambassador still was pending in court.

In general the print media remained candid and independent. The mainstream print media included four daily newspapers that reported on national politics. The largest newspaper, the Nation, was independent and often published articles critical of government policies. The second largest newspaper, the East African Standard, was controlled by an investment group with close ties to the Government and the ruling KANU party. It generally, although not automatically, was supportive of the Government. The third daily newspaper, the People Daily, formerly a weekly, was owned by an opposition politician and was highly critical of the Government. The fourth daily, the Kenya Times, which has a small circulation, reflected KANU party views. There also were numerous independent tabloid or "gutter" periodicals, which appeared irregularly and were highly critical of the Government. Reporting in these tabloids ranged from revealing insider reports to unsubstantiated rumormongering.

On May 8, Parliament passed a controversial bill regulating the media. Under the act, commonly known as the "Media Bill," publishers were required to purchase a bond of \$12,800 (1 million Kenyan shillings) before printing any publication, then they must deposit copies of their newspapers and books with a registrar within 2 weeks of publication. The new bond amount was a 100-fold increase over the previous bond amount of \$128 (10,000 Kenyan shillings). The new law makes it a crime to sell or distribute publications not deposited or bonded, under penalty of a fine of \$256 (20,000 Kenyan shillings) or 6 months imprisonment. Many observers viewed the law primarily as an effort to rein in the tabloid or "gutter" press, which will jeopardize the survival of many financially marginal publications. However, some observers also considered it a measure to intimidate and curb the legitimate press prior to the December 27 general elections.

While all newspapers suffered financially to varying degrees because of the prolonged economic and business downturn, the Government no longer openly pressured businesses against advertising with opposition media during the year.

While there was no overt official government pressure on journalists, individual journalists reported that they were pressured by government officials and other influential persons to avoid reporting on issues that could harm the interests of these persons or expose their alleged wrongdoings. Some editors and journalists reportedly practiced self-censorship because of government pressure or bribes; there also were credible reports of journalists accepting payments to report or withhold certain stories, some of which were fabricated.

The Government attempted to intimidate the pro-opposition press with arrests and pressure, and by selective prosecution of journalists under a colonial-era section of the Penal Code that criminalizes the publication of information likely to cause fear or alarm.

Journalists were arrested, harassed, and otherwise intimidated during the year. For example, on March 15, supporters of the now defunct National Development Party reportedly attacked Nation journalist Odhiambo Orlale at the party's headquarters during a party executive committee meeting. An Assistant Minister present reportedly warned Orlale against writing stories about the party that he deemed negative. Before the party leader Raila Odinga reportedly intervened to rescue the journalist, Orlale was beaten with clubs. The police reportedly took no action when the incident was reported nor have they taken any by year's end.

On April 11, city council guards beat People Daily photographer Collins Kweyu in Nairobi when he took pictures of city hawkers being arrested by the guards and Administration Police. Four Administration Police reportedly watched without intervening as the guards attacked Kweyu for allegedly operating without a license. Kweyu's camera was confiscated. The Inspectorate Department reportedly was investigating this case at year's end.

On September 22, persons attending a political rally organized by the opposition "Rainbow Alliance" beat a television crew with the private news production company, Picasso Communications. The crew reportedly was mistaken for a KBC news crew, which allegedly prompted the attack. There were no reports of any arrests by year's end.

On September 23, journalists George Omonso of the Daily Nation and John Wanddeto of the People Daily were arrested allegedly for inciting striking teachers who were demonstrating in Kitale. The two journalists later were released.

Arwings Odera, a freelance journalist who had published a series of articles alleging corruption in government-backed projects, remained outside the country for fear of his life at year's end.

The Government continued to loosen its control over electronic broadcast media in and around Nairobi, while maintaining its dominance of broadcast services to regional towns and rural areas, where the majority of the country's population live.

KBC is the oldest broadcaster and the only one with a national network of broadcast and cable television, AM and FM radio, and short-wave broadcasts. KBC remained the only domestic source of current information for most persons outside the Nairobi area; stations operated by other media companies, including 12 radio stations, operated primarily in Nairobi and its outlying areas.

The Government controlled KBC, and KBC's monopoly on national broadcasting continued to limit severely the ability of opposition leaders and other critics of the Government to communicate with the electorate outside the capital. KBC stations did not criticize the Government and give a large share of news time to government or KANU party functions and little coverage to opposition activities. During the year, KBC news coverage remained biased in favor of KANU and President Moi. In addition, the KBC's limited coverage of the opposition generally was negative, compared with uniformly positive coverage of KANU. In September KBC granted the KANU presidential aspirant unprecedented radio and television airtime, covering live his political rally in Nakuru for several hours. No similar coverage was given to any of the opposition candidates during the campaign period; however, at the end of the campaign KBC provided small amounts of free airtime to all parties.

KTN, a subsidiary of the East African Standard group of newspapers that was owned by KANU supporters, aired news programs with more balanced political coverage than KBC. KTN broadcasts in Nairobi and Mombasa. During the year, KTN also began broadcasting in Nakuru as part of an expansion program to reach the entire country. Stellavision also was owned by KANU supporters and operates in collaboration with TV Africa and SKY TV of London. Stellavision did not air local news, relying instead on rebroadcasts of SKY TV and British Broadcasting Corporation (BBC) world news; it broadcasts in Kisumu, Mombasa, and Nairobi. Other TV stations in operation in Nairobi were Nation-TV, associated with the Nation newspaper group, and Family, a Christian-oriented broadcaster. Citizen TV and Citizen Radio, which broadcast generally objective news programs, ceased operations for a time in 2001. However, Citizen Radio and Citizen TV resumed broadcasts by the end of 2001. Family TV and Radio broadcasts in the Nairobi metropolitan area; Nation Television also broadcasts in Mombasa, providing independent media coverage.

The following radio stations also broadcast in Nairobi: Nation, Kameme, BBC, Voice of America (VOA), Capital, Family, Kiss, Iqra, Metro East, and Sounds Asia. In addition to KBC, Sauti ya Rehema, a nondenominational

religious radio station broadcasting in Kiswahili, English, and other local languages in Eldoret, and the Mombasa-based Christian-oriented Baraka FM radio broadcasting in Kiswahili and English transmit outside of Nairobi. In August Sauti ya Rehema launched a television station in Eldoret that broadcast, in English and Kiswahili, local and international Christian programs reaching a large segment of the Rift Valley and parts of Uganda. The Nation Media Group broadcasts radio and television transmissions to Nairobi and received authorization for radio broadcasts in Mombasa, Kisumu, and Nakuru. Iqra, a radio station run by the Supreme Council of Kenyan Muslims (SUPKEM) provided information, educational programming, and entertainment for Muslim audiences in Nairobi. VOA programming was broadcast on FM radio in Nairobi; however, a VOA request for similar broadcast access to Mombasa was not approved.

The Government, through the Communication Commission of Kenya (CCK, continued to delay action on a number of radio and television license applications on the grounds that it was reorganizing and regularizing its licensing procedures. The Ministry of Information, Transport, and Communication continued to argue that it was waiting for the recommendations on media liberalization from the Attorney General's Task Force on Press Law. That Task Force made its initial report in 1998; however, it still had several outstanding issues to resolve, including the manner of selection of the 13-member Media Commission, which would act as an independent body issuing broadcast licenses. In April 2001, the Government announced that a policy on broadcast licensing would be issued to ensure transparency in licensing procedures; however, no such policy was issued by year's end. The CCK regulated frequency allocations, while the Ministry of Transport and Communications issued licenses. The Ministry has licensed 33 organizations (6 of which were KBC companies) to broadcast, and the CCK has allocated frequencies to a total of 9 television and 18 radio stations, although some were not broadcasting at year's end. Nation Media sued the Government for permission to broadcast radio and television nationwide, but the case still was before the courts at year's end. In June 2001, the Government announced that it would not issue any more licenses to broadcast in Nairobi until new policies were in place. According to the Ministry, there were 120 applications for Radio/TV licenses pending at the end of 2001.

Private organizations that have been issued frequencies to broadcast but had not yet done so included the Pentecostal Church, Pete Aviation, and Maritime Media Services. During the year, Daystar University was granted a broadcasting license and planned to serve Nairobi, Machakos, and Kijado once it was allocated frequencies. Daystar intends to utilize the low-powered radio station to train journalism students. The Catholic Church, which reportedly has been allocated radio and television frequencies for Nairobi, had not begun broadcasting by year's end. It reportedly wanted a nation-wide frequency, while the Government insisted on region-by-region allocation of locally based broadcasters. The Catholic Church reportedly also was seeking frequencies in Mombasa, Nyeri, and Kisumu. The Government also licensed and provided frequencies to the East African Television Network (EATN), the only recipient of a national frequency other than KBC; however, a dispute arose with the Government after EATN formed a partnership with Nation Media. The Government blocked EATN from using the frequencies and the case was pending in the courts at year's end.

In January 2001, the CCK ordered the shutdown of Citizen broadcasts for unpaid licensing fees and improper use of communications equipment. Citizen claimed that the shutdown, which only affected its operations outside Nairobi, was motivated politically. Citizen, which began broadcasting in 1999, appealed the order in the courts and continued broadcasting in Nairobi; however, in 2001 the court upheld the CCK's order and Citizen again appealed to the Court of Appeal. In April 2001, after Citizen moved its broadcast equipment from borrowed space on government-controlled towers to a new location on the outskirts of Nairobi, the CCK sealed Citizen's offices, confiscated equipment, and detained its owner, who later was released. Citizen appealed the Government's action, and the court ruled that the CCK had acted properly in seizing equipment. The CCK subsequently stripped Royal Media, the parent company of Citizen, of its broadcast licenses. Citizen's owner appealed that ruling. In February criminal charges accusing him of illegally setting up a radio communication station in Nairobi were dropped. However, Citizen's owner still was seeking the return of confiscated broadcasting equipment at year's end.

Representatives of the international media remained free to operate; 120 international correspondents worked in the country, and approximately 100 media organizations reported out of Nairobi without official interference.

Sedition was not grounds for censorship of publications; however, the Prohibited Publications Review Board reviewed publication bans. A number of publications remained banned, including such works as "The Quotations of Chairman Mao Zedong" and Salman Rushdie's "Satanic Verses."

In March police banned the staging of the play, Ngoma Cia Aka (the Whirlwind) by playwright Wahome "Whispers" Mutahi in Nyeri. The police claimed that the play was immoral and posed a security threat.

The Government did not restrict access to the Internet. There were approximately 20 domestic Internet service providers (ISP's) that generally were privately owned. Internet access was limited only by economic and

infrastructural factors, and was fairly widespread in urban areas. Although liberalization of Internet communications continued, Internet access in the country continued to be limited by Telkom, the communications parastatal. All ISP's were required to use the communications parastatal to connect to the Internet. There were no reports of Telkom interfering with the content of Internet transmissions. Telkom was slated for privatization in 2001; however, no action was taken by year's end.

The Government and school administrators continued to limit academic freedom. There were six private universities and six universities owned, subsidized, and administered by the Government. Most post-secondary students attended Government-run institutions, partly because of their lower fees. President Moi, as chancellor of all state universities, appointed the vice chancellors who managed the institutions under the supervision of the Ministry of Education. A number of student activists have been expelled from universities in recent years because of political activities, and most have been refused readmission. Students claimed that the Government interfered in student elections to ensure sympathetic student leaders.

Student protests and riots occurred sporadically during the year, and police forcibly dispersed several protests after they became violent, which resulted in injuries (see Section 2.b.).

b. Freedom of Peaceful Assembly and Association

The Constitution provides for freedom of assembly; however, the Government restricted this right in practice. Organizers must notify the local police in advance of planned public meetings; however, authorities continued to disrupt public demonstrations and meetings about which the police had been informed in advance, often characterizing them as "illegal" gatherings. In 2000 President Moi repeated his 1999 statements that government officials should deny "permits" (for public demonstrations) to politicians who use public rallies to abuse other leaders; however, officials have legal authority to cancel planned public gatherings only if there were simultaneous meetings previously scheduled for the same venue, or if there were specific security threats. The President's 2000 statement barring MWM from holding public meetings was aggressively enforced in 2001, although there was no apparent legal basis for this policy (see Section 1.d.). With the exception of a controversial march through downtown Nairobi in support of the KANU presidential candidate for the December general elections (see Section 1.d.), the Mungiki did not hold rallies during the year. Moi said that licenses would only be given to registered political parties, and that the Government would ban events by any "lobby groups, some religious organizations, and nongovernmental organizations whose aims and operations were sinister." Government and opposition politicians often warned political opponents not to attend or organize gatherings in certain constituencies, and during the year such warnings were more pronounced prior to the December 27 general elections. Also during the year, a number of opposition rallies and meetings were disrupted by organized youth and police, often violently.

Police forcibly disrupted public assemblies, including some political rallies and meetings (see Section 1.d.). The Government at times arrested civil society leaders and opposition politicians and charged them with participating in illegal actions. For example, on March 3, a chief in Bungoma reportedly cancelled a civic education meeting organized by the Community Empowerment and Development Forum on the grounds that the organizers were sympathetic to opposition parties.

On May 12, M.P. Kipruto Arap Kirwa and 13 others were arrested and their vehicles confiscated for holding an "unlawful" meeting in Nandi District after they attempted to hold a political meeting at Keteng Primary School. Kirwa, who reportedly was beaten at the time of the arrest, was held for 24 hours and released without charge while 13 others held with him were released on bond on May 16.

On August 15, police disrupted a meeting organized by the Coast Civil Society Forum in Mombasa that they described as illegal. The group of approximately 100 persons were meeting to elect officials to the Forum. The Mombasa police chief Gerald Oluoch said that the meeting was blocked because it had not been authorized.

On September 9, police disrupted a meeting to elect officials of the Social Democratic Party (SDP). The SDP is a member of the umbrella party the National Alliance Party of Kenya (NAK); a NAK official, Kiraitu Murungi, accused the police of systematically harassing NAK members.

On September 19, 15 councilors from Tharaka District were reportedly arrested at a restaurant for holding an "illegal" meeting. They later were released following the intervention of the area District Commissioner. The civic leaders maintained that they were meeting in order to plan for the nomination of delegates to the constitutional review conference, which was canceled once Parliament was dissolved in October prior to the December general elections. The conference required the participation of M.P.s and could not proceed without them.

During the year, several meetings and rallies organized by Ford People, whose presidential candidate was former Finance Minister Simeone Nyachae, were the targets of physical attacks and forced cancellations.

In May Ford People was forced to cancel a meeting in Malindi under pressure from the police. The Malindi police chief Charles Ontita reportedly said that the meeting had been canceled because of "the high political temperature, which might lead to violence and injuries."

Following an opposition rally in April 2001, that police earlier had attempted to cancel for "security concerns," police arrested two DP M.P.s, Maina Kamanda and David Manyara (see Section 1.d.).

Some civil society activities, including demonstrations, were disrupted during the year. For example, on February 20, antiriot police armed with teargas and batons disrupted a peaceful demonstration organized by the Center for Human Rights and Civic Education in Mwingi District to protest the alleged land grabbing by a cabinet minister. Several demonstrators reportedly were injured and arrested. Four of the arrested activists later were released, and the case still was under investigation at year's end.

In March President Moi called for the Mungiki and a number of other vigilante groups, to be "banned" following the group's involvement in a clash in Kariobangi, a Nairobi neighborhood, in which 23 persons were killed (see Section 1.a.). However, in August, members of Mungiki were allowed to demonstrate through downtown Nairobi in support of KANU presidential aspirant and Moi protege Uhuru Kenyatta without interference from security forces, suggesting that the ban on this group was enforced selectively. No action was taken against the police who forcibly dispersed a march by Mungiki members and beat them in April 2001. Some Mungiki members may have been in custody at year's end; however, Mungiki leader Ibrahim Waruinge was released by year's end.

University student protests occurred sporadically during the year, and at times they became violent. On July 19, University of Nairobi students protested the shooting death by a police officer of a fellow student, who was part of a group assaulting a police station to free another student. The protest lasted 2 days, and student threw stones, blockaded roads, burned tires, and destroyed property in downtown Nairobi. Police responded with tear gas and rubber bullets; however, no injuries were reported. On September 16, students from the same university engaged the police in running battles and threw stones in downtown Nairobi after a police officer shot and killed a university student who they suspected of using or selling drugs. After several hours of trying to quell the riot, police officers responded with live ammunition; however, no injuries or deaths were reported.

Violent incidents continued between progovernment supporters and opposition supporters during the year; political parties reportedly used gangs of young followers to harass other parties and to prevent them from holding meetings or events. In April armed youth in Butere constituency attacked Ford People officials, including the national chairman Kimani wa Nyoike, as they attempted to open party offices. The group was attacked with stones and other objects, shattering windows of the vehicles carrying Nyoike and another official. The attacks followed on MP Amukoa Anangwe's warning to Ford People officials not to tour his constituency. The Ford People officials fled and were unable to address their supporters. The armed youth announced that no opposition politician would be welcome to campaign in the Butere constituency.

The Government continued to use the Societies Act to restrict freedom of association. The act requires that every association be registered or exempted from registration by the Registrar of Societies. Since 1997 the Government has acted on some long-pending applications for political party registration, increasing the number of registered political parties from 23 to 40. However, the Government continued to refuse to reverse its 1994 denial of registration of the Islamic Party of Kenya.

Unlike in the previous year, former President Moi did not attack repeatedly NGOs in public speeches, saying they were in the pay of foreigners intent on destabilizing the country; however, government officials, including Moi, did accuse international NGOs and some segments of the donor community of supporting the opposition in the period prior to the December general elections but offered no evidence to back these charges.

c. Freedom of Religion

The Constitution provides for freedom of religion, and the Government generally respected this right in practice; however, while groups generally were allowed to worship freely, the Government at times interfered with other activities by religious groups.

The Government required religious organizations to register with the Registrar of Societies, which reported to the Office of the Attorney General. The Government allowed traditional indigenous religious organizations to register,

although many chose not to do so. Once registered religious organizations enjoyed tax-free status, and clergy were not subject to duty on purchased goods. Religious organizations generally received equal treatment from the Government; however, some small splinter groups have found it difficult to register due to their inability to define their status as more than an offshoot of a larger religious organization. The Government has not granted registration to the Tent of the Living God, a small Kikuyu religious group banned during the single party-era; however, with the arrival of a multiparty system in 1992, membership in the Tent of the Living God has diminished greatly. Some members of the group were believed to have joined the Mungiki. On April 30, police arrested 39 members of the Tent of the Living God for holding an illegal meeting after the group led a march through downtown Nairobi. On May 7, all 39 were released on condition that they hold no illegal meetings or processions in the future.

Following the discovery of "cult" killings in Uganda in 2000, William Ruto, then Assistant Minister in the Office of the President, said that the Government would crack down on religious groups that endanger the safety of their adherents. In January M.P. Odeny Ngure called on the Government and mainstream churches to cooperate in formulating policies to eliminate cults from the country; however, no action was taken by the end of the year. Also in January, district officials in Gigili stopped a religious meeting at the Emmanuel Church of God during a 2-week crusade after community residents complained of continual wailing and screaming coming from the church. Residents charged that the group was a cult and that its members had sold their property to prepare for the return of Jesus Christ; the church denied the allegations.

In June in Busia, a district officer, who was a Seventh-Day Adventist, was suspended for refusing to perform his official duties on Madaraka Day, which fell on a Saturday. Also in June in Nandi, the Board of Governors suspended 10 high school students, who were Seventh-Day Adventists, for refusing to take a test on a Saturday. Supporters of the students challenged the Board's decision, arguing that the school did not have the constitutional right to deny individuals the right to observe their religious practices. There was no information on the status of the case at year's end.

The Government historically has been unsympathetic to tribal religious groups that have engendered protest movements. The Government frequently harassed and periodically arrested and detained members of the Mungiki, a small, controversial, cultural and political movement based in part on Kikuyu ethnic traditions. Mungiki espoused political views and cultural practices that were controversial to mainstream society; however, many observers characterized the Mungiki as a vigilante group or gang because of the criminal activities of some of its members as well as their reported harassment and intimidation of residents in areas where the group was active (see Sections 1.a. and 2.b.). While religion may have played a role in the formation of the group, observers believed that it was not a key characteristic of the group. The Mungiki did not adhere to any single religion and members were free to choose their own religion; the group included Muslims and Christians. The number of Mungiki members was unknown, but the group has a significant following among the unemployed and other marginalized segments of society. The debate over the rights of the Mungiki to practice their cultural traditions and advance their political agenda was ongoing; however, during the year, certain elements of this group were supporting ruling party presidential aspirant Uhuru Kenyatta (though he has repudiated them) and no longer were viewed to be targets of government harassment. In addition, the Mungiki were involved in or implicated in a number of violent attacks against political or ethnic rivals during the year (see Section 1.a.).

Practicing witchcraft reportedly was a criminal offense under colonial-era laws; however, persons generally were prosecuted for this offense only in conjunction with some other offense, such as murder. Witchcraft traditionally has been a common explanation for diseases for which the causes were unknown. The practice of witchcraft was understood widely to encompass attempts to harm others not only by magic, but also by conventional means such as poisons. Although many traditional indigenous religions included or accommodated belief in the efficacy of witchcraft, they generally approved of harmful witchcraft only for defensive or retaliatory purposes and purported to offer protection against it.

In January in Nyamira, police arrested two persons for possession of witchcraft supplies, including snake skin, tortoise shell, and powders, and for practicing witchcraft. According to the police, a pastor from Butere Mumias Deliverance Church claimed that the two persons had caused the mysterious illness of a man.

Muslim leaders continued to charge that the Government was hostile toward Muslims. Muslims complained that non-Muslims received better treatment when requesting citizenship documents. According to Muslim leaders, government authorities scrutinized more rigorously the identification cards of persons with Muslim surnames and required them to present additional documentation of their citizenship (i.e., birth certificates of parents and, sometimes, grandparents). The Government has singled out the overwhelmingly Muslim ethnic Somalis as the only group whose members were required to carry an additional form of identification to prove citizenship. Ethnic Somalis must produce upon demand their Kenyan identification card and a second identification card verifying screening; both cards were required to apply for a passport. This heightened scrutiny appeared to be due to an

attempt to deter illegal immigration, rather than due to the religious affiliation of ethnic Somalis. Since 2001 the immigration office in the predominately Muslim city of Mombasa has required that applicants for birth certificates or passports had to include their grandparents' national documents with their applications. Sheikh Mohammed Dor, the Secretary General of the Council of Imams and Preachers, criticized the action as imposing "outrageous restrictions" on the country's Muslims.

On March 28, government authorities charged Wanjiru Nduhiu, the leader of an unregistered Kikuyu group, with urging her followers to renounce Christianity and revert to traditional beliefs and practices, such as FGM; she remained in detention at year's end.

In late August 2001, Marsden Madoka, former Minister for Internal Security, reportedly stated that the Government intended to take more than 341 schools, which were mainly under the control of the Presbyterian, Anglican, and Catholic churches, and transfer control to the African Independent Pentecostal Church of Africa (AIPCA). On January 25, President Moi directed district education boards to return those schools to the AIPCA that it had operated prior to the country's independence; however, Moi ordered that AIPCA schools already sponsored by other churches to remain under such sponsorship. The British Colonial Government seized the AIPCA schools because of the church's support of the anticolonial Mau Mau movement. AIPCA began to repossess its schools during the year.

There was no new information in the August 2000 case of Father John Anthony Kaiser, a Catholic priest working in the country for more than 30 years, who was found dead near Naivasha town. A FBI report, released in April 2001, concluded that the evidence collected was most consistent with suicide, and that it was unlikely that Father Kaiser had been murdered. The Attorney General has stated that he would reopen the case only if new evidence were presented.

There generally was a great deal of tolerance among religious groups; however, there were a few instances of violence between Christian and Muslim groups, and Muslims continued to perceive themselves treated as second-class citizens in a predominantly Christian country.

There were several disputes over land ownership during the period covered by this report; some resulted in violence. In January approximately 500 squatters in Nyeri district forcibly dispersed members of the Othaya Presbyterian Church of East Africa from the church compound in which the worshippers had assembled for open-air services; several persons were injured. Both the worshippers and the squatters claimed ownership of the church property, which is located on government land. An investigation into the incident was ongoing at year's end. Also in January in Marakwet district, several persons, including a Pentecostal Assemblies of God (PAG) minister, were injured during a land dispute between members of a Catholic church and the PAG. The dispute reportedly began when Catholic worshippers accused PAG members of making too much noise while praying in a building adjacent to the Catholic church.

On January 27, Egerton University officials barred approximately 300 worshippers from the African Inland Church (AIC) from conducting services in the Lord Egerton Castle, which has been the subject of a longstanding property dispute between the University and the AIC. According to the AIC, President Moi allocated the castle and the 50 adjacent acres to the Church in 1995; according to records at the Ministry of Lands, the property belongs to the chaplain of the University and two other individuals. President Moi issued a statement indicating that the castle and surrounding property belonged to the University; however, AIC leaders urged their followers to ignore the statement. The dispute was ongoing at year's end.

In March progovernment youths forcibly dispersed persons worshipping at a church in Nairobi, scattered church property out of the building, and locked worshippers outside the church. The youths charged that the church was located on land belonging to KANU and that the police had failed to assist them in reclaiming the land. No known action was taken against the youths by year's end.

Occasionally mobs killed members of their communities on suspicion that they practiced witchcraft; however, there were no statistics available on the number of such deaths during the year. For example, on January 14, 80-year-old Rosalina Owuode, suspected of being a sorcerer, was stoned to death by a mob in Nyabiswa village in Migori district. On February 9, a married couple, Nyakundi and Josephine Makori were beaten and burnt to death by a mob in Kitutu Masaba in Nyamira district for allegedly practicing witchcraft. In April villagers killed a man in Gucha on suspicion of being a sorcerer and for allegedly bewitching a neighbor who had recently died. No arrests were reported in any of these cases by year's end.

For years Muslims and Christians have held an open debate over their respective places in society. Each group

claimed to have a larger number of adherents than was plausible, and some Muslim groups believed that the Government and business communities deliberately impeded development in predominantly Muslim areas. Some Muslim leaders claimed that discrimination against Muslims has resulted in a greater incidence of poverty among Muslims than among other religious groups; however, there was no statistical evidence to support this claim.

For a more detailed discussion see the 2002 International Religious Freedom Report.

d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

By law citizens may travel freely within the country, and there were no reported violations of this right. However, police routinely stopped vehicles and checked vehicle safety and driver documents on roads throughout the country. Police often demanded bribes at such checkpoints. Ethnic Somalis must produce upon demand their Kenyan identification card and a second identification card verifying screening; both cards were required to apply for a passport (see Section 2.c.).

The Government did not restrict foreign travel or emigration; however, the law requires a woman to obtain her husband's or father's permission to obtain a passport (see Section 5). In practice adult women often were able to circumvent this restriction by claiming to be unmarried. Civil servants and M.P.s must get government permission for international travel, which generally was granted routinely. Unlike in the previous year, the Government did not deny permission to some government ministers to travel.

Unlike in the previous year, the Government did not close the border with Somalia during the year.

The majority of the estimated 400,000 persons displaced or forced to relocate during the early 1990's because of ethnic violence were believed to have returned to their homes or moved elsewhere; however, some still were waiting to return home at year's end. Many of the rural residents displaced by the violent ethnic clashes in Rift Valley between 1991 and 1993 still have not returned to their homes and remain displaced in urban areas. Some of the several thousand persons displaced by ethnic clashes since then also have not returned to their homes due to fear of renewed violence (see Section 5).

The law does not provide for the granting of asylum or refugee status in accordance with the 1951 U.N. Convention Relating to the Status of Refugees and its 1967 Protocol; however, in 1991 the Government drafted legislation to establish a mechanism for granting refugee or asylum status. The drafting committee submitted the legislation to the Attorney General's office for review in 2000; and by year's end, the Attorney General's office reported that the relevant Ministry could forward the legislation to the Cabinet for discussion and approval before its publication and enactment. The UNHCR granted refugee status to Somali refugees at the Dadaab camps and to Sudanese refugees arriving at the Kakuma camp. A UNHCR eligibility committee in Nairobi performed a similar function for individuals of other nationalities.

The Government offered first asylum and provided it to the approximately 200,000 refugees registered by UNHCR who lived in official UNHCR camps. An undetermined number of refugees lived outside the camps in cities and rural areas. Somalis accounted for approximately 64 percent of the total refugee population, followed by large numbers of Sudanese and a scattered number of other nationalities from across the region. In April an estimated 10,000 Somalis fled to Mandera in the northeastern part of the country after fighting erupted at Bula Hawa on the Somali side of the border. Three refugees were killed by stray ammunition from warring factions. The Government threatened to return the refugees to Somalia if UNHCR did not resettle them. Under international pressure, the Government moved refugees to relative safety, away from the border. By year's end, most of the refugees either had returned to Somalia or were resettled in Daadab.

Police performed nighttime sweeps in urban areas to round up illegal immigrants and refugees (see Sections 1.d. and 1.f.).

The Government required that all refugees reside at designated camps, most of which were located near the Somali and Sudanese borders, unless granted permission to live elsewhere in the country, primarily to attend higher education institutions, undergo medical treatment, or avoid security threats at the camps. However, many refugees lived illegally outside the camps, especially in Nairobi.

Incidents of rape of women and girls in refugee camps continued to occur (see Sections 1.c. and 5). Many rapes occurred when women and girls collected firewood and building materials outside the camps; however, reported rapes continued to decline during the year.

Acts of violence, including banditry and shootings, occurred frequently near the camps. Refugees have been mistreated and abused by citizens and by residents of different refugee camps because of ethnic and religious differences. Interclan violence frequently erupted among rival Somali clans at the camps (see Section 5); Somali refugees who marry non-Muslims also may be subjected to abuse by family members.

There were no reports of the forced return of persons to a country where they feared persecution.

Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

The Constitution provides citizens with the right to change their government through free and fair multiparty elections; however, this right was realized fully only in December when citizens chose a new president through an election for the first time since President Moi came to power in 1978. The December 27 multi-party general elections were the country's third for presidential, parliamentary, and civic seats. Five presidential candidates contested the elections, but the main contestants were KANU candidate Uhuru Kenyatta and NARC candidate Mwai Kibaki, a former Vice-President and Minister of Finance in former President Moi's government. NARC is a coalition of more than a dozen political parties, including former members of KANU who defected from that party during the year. This coalition formed a united front to contest the December general elections. Since independence in 1963, KANU had controlled continuously both the presidency and the national legislature.

During the year, citizens prepared for the December presidential, parliamentary, and civic elections. There were active political campaigns throughout the year, some of which were marred by violence. The Government continued to use physical beatings, arbitrary arrest, and prosecution to harass and intimidate opposition M.P.s, and political violence and intimidation, often with ethnic undertones, increased during the run up to the elections; however, the level of election-related violence was substantially less than in the previous two general elections. The freedoms of assembly and of speech often were restricted during the year as opposition leaders complained their activities were being targeted and their views were not being covered sufficiently by KBC. The Government's domination of domestic broadcast media, especially outside major urban centers, continued to restrict severely the ability of opposition politicians to communicate with citizens (see Section 2.a.). Police or organized youth gangs disrupted or forced the cancellation of a number of opposition meetings and rallies (see Section 2.b.). Politicians and public servants routinely warned political rivals against campaigning in their areas.

At the local level, the President exercised sweeping power over the administrative structure. The President appointed both the powerful provincial and district commissioners as well as numerous district and village officials. In elections many local officials actively assisted the ruling KANU.

At the national level, the Constitution authorizes the President to dissolve the legislature and prohibits debate on issues under consideration by the courts. This prohibition, in conjunction with a ruling by the Speaker of the Assembly that some aspects of the President's conduct were inappropriate topics for parliamentary debate, has limited the scope of deliberation on a number of political issues. M.P.s were entitled to introduce legislation, but in practice it generally was the Attorney General who did so. The President significantly influenced the legislative agenda. However, the National Assembly had the power to hire its own staff and to vote its own budget, despite President Moi's long-expressed opposition to it doing so. In 2000 the National Assembly passed implementing legislation to establish the Parliamentary Service Commission, which exercised fully its power to hire staff and establish a budget by year's end. In August 2001, opposition M.P.s in the National Assembly successfully blocked a constitutional amendment to establish an independent anticorruption authority, which was backed by KANU and the President. The opposition claimed that the legislation did not give the proposed authority sufficient independence and objected to an amnesty provision in the legislation.

During the year, the President Moi fired a number of government officials, including the Vice President, after they became affiliated with the "Rainbow Alliance," a grouping of KANU dissidents and their supporters who opposed what they considered to be preferential treatment being given to presidential candidate Uhuru Kenyatta in KANU's nomination process.

In 2000 President Moi, acting as chairman of KANU, suspended six M.P.s for dissent, including Jimmy Angwenyi, Kipkalya Kones, Anthony Kimeto, Cyrus Jirongo, and former Finance Minister Simeon Nyachae. The suspension prevented the M.P.s from bringing any motions sponsored by their party to Parliament; however, they still could submit motions on their own and participate in all Parliament activities.

In 1998 a constitutional review commission was created under the Constitution of Kenya Review Act to recommend changes in the Constitution that would reduce the power of the Presidency. After the process stalled in 1999, the National Assembly created a Parliamentary Select Committee to revise the existing act and form a

review commission; the Ufungamano Initiative, a church-led group, formed the next day, creating a parallel process. During 2001 the Constitution of Kenya Review Commission (CKRC), created by Parliament in 2000, expanded following months of political wrangling and stalled efforts; in May 2001, the Ufungamano process merged with the parliamentary process. In June 2001, the newly created Constitutional Review Commission began work. During the year, the new Commission faced a number of obstacles, including efforts by the judiciary to block it from preparing a draft constitution and several delays in the process leading to requests to extend the Commission's mandate. However, the CKRC completed a draft constitution in September, which was expected to be submitted to Parliament for debate after a national convention. Some had called for holding the December general elections under the new constitution, but delays in the process made this impossible.

In July 2001, at the start of the CKRC hearings, the President declared that NGOs and churches should not be involved in the review process and should not engage in civic education. However, this directive was ignored; the CKRC accredited several NGOs to conduct civic education on the process and these groups were engaged in civic education activities during the year.

Elected local councils existed, but the executive branch of the central Government had not granted them adequate funding and had restricted their functions. Although rural and municipal councils were authorized by law to provide a wide range of health, education, and infrastructure services, in practice their functions were reduced to partial oversight of schools, secondary and tertiary roads, markets, and natural resources such as forests. Most councils lacked sufficient financial autonomy and revenues to perform adequately even these limited functions.

Although there were no legal restrictions, traditional attitudes circumscribed the role of women in politics. There were only 9 female M.P.s (4 elected and 5 nominated) in the 222-seat National Assembly prior to the December general elections. There only was one female member of the Cabinet. The December elections increased the number of women in Parliament to nine elected and six nominated.

There was one nominated M.P. who was of Asian origin in the former Parliament. Although the President Moi's Cabinet included persons from many ethnic groups, approximately one-third of the ministers were either Kalenjin or Luhya.

Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A number of domestic and human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were somewhat cooperative and responsive to their views; however, there were some reports that less established NGOs, particularly those in rural areas, were subjected to interference from provincial administrators and security forces, and government officials intimidated and threatened to disrupt the activities of human rights and other organizations and NGOs.

The number of human rights organizations continued to grow. These included NGOs such as the KHRC, the Kenya Anti-Rape Organization, Coalition on Violence Against Women, The Center for Human Rights and Democracy, Muslims For Human Rights, the Legal Advice Center, the Catholic Justice and Peace Commission, the National Council of Churches of Kenya, the Center for Governance and Development, People Against Torture, the Independent Medico-Legal Unit (IMLU), and the Release Political Prisoners pressure group. An array of legal organizations, including the International Commission of Jurists-Kenya, the International Federation of Women Lawyers (FIDA), the Law Society of Kenya, and the Public Law Institute, advocated human rights.

Several NGOs maintained comprehensive files on human rights abuses. A number of attorneys represented the indigent and human rights advocates without compensation, although they could handle only a small percentage of those who needed assistance, and were concentrated chiefly in Nairobi and other large cities.

The Government continued to criticize publicly and to intimidate NGOs, many of which it accused of being "subversive" and of working with the opposition to replace the KANU Government. The Government NGO Coordination Board under the NGO Act registers NGOs. The Government used this structure to put pressure on the nongovernmental National NGO Council. Since 1999 the Office of the President instructed all district governments to monitor NGOs within their districts with a view to ensuring that NGOs either advance government-approved objectives or cease to operate; however, NGOs did not report an increase in government monitoring during the year.

Some civil society activities were disrupted during the year (see Sections 2.a. and 2.b.). For example, on January 4, police disrupted a civic education play performed by a theatre group in conjunction with an NGO in Keiyo

District. The police characterized the gathering as "illegal." The previous day, a similar play being performed in the same district, and launched by M.P. Tabitha Seii, also was disrupted.

Less than 2 weeks after the October 18 release of the Akiwumi Report (see Section 5), police raided two local NGOs--Muslims for Human Rights (MUHURI) and Human Resettlement and Disaster Care (HUREDICA)--during which documents reportedly containing evidence against the Government were seized. Both NGOs had done work related to the ethnic and political violence surrounding the 1992 and 1997 general elections that led to a number of deaths and displaced persons. Three of HUREDICA's principal staff also were arrested during the raid and later released after 6 hours of interrogation. The questioning reportedly included inquiries on who funded their organization and whether they had plans to sue President Moi over the ethnic clashes.

The Government allowed human rights organizations to witness some autopsies of persons who died in police custody. The Attorney General's Office generally responded in detail to foreign embassies' human rights inquiries; however, some local human rights NGOs complained the Attorney General's office and other government offices often were not responsive to their inquiries.

The KHRC produces a "Quarterly Human Rights Report" (formerly the "Quarterly Repression Report") that cataloged the human rights situation in the country, as well as special reports on pressing human rights problems. The Institute for Education in Democracy and other NGOs monitored elections in cooperation with the Electoral Commission and diplomatic missions.

The 10-member SCHR established in 1996 was empowered to "investigate alleged violations of constitutional freedoms," including abuse of power by public officials. It was tasked with drafting recommendations on human rights problems and providing these to the government agencies under whose purview the problems fall. However, it was subordinate to the Office of the President and it had received sufficient funds to fill only 20 of its 27 authorized staff positions; the positions were filled mostly with staff on secondment from the Government. Although it had been accused of being relatively inactive in the past, in June 2001, the SCHR produced a thorough report on the death of six prisoners from King'ong'o prison in Nyeri (see Section 1.a.). The SCHR also produced a frank report on the harsh conditions faced by detainees in prisons and juvenile detention centers. In June Parliament passed a bill creating a more autonomous and independent national human rights commission--the Kenya National Commission on Human Rights--that is expected to replace the SCHR. President Moi assented to the bill in October. The legislation was drafted by the Attorney General and the SCHR with the help of NGOs and civil society. Since Parliament was dissolved in October, the commission had not been established by year's end; it is the duty of the Parliamentary Speaker to invite applications to the Commission.

Section 5 Discrimination Based on Race, Sex, Disability, Language, or Social Status

The Constitution prohibits discrimination on the basis of a person's "race, tribe, place of origin or residence or other local connection, political opinions, color, or creed"; however, government authorities did not enforce effectively many of these provisions. There was credible evidence that the Government sponsored large-scale ethnic violence during the early 1990's, and there were some indications that some government officials at least have tolerated and in some instances instigated ethnic violence on a smaller scale since that time. The SCHR stated in its 2002 general report that "many undisputed reports...indicate that leaders and senior public servants have continued to mismanage their freedom of expression by making inflammatory and inciting statements with far reaching consequences." The report also noted that "The Committee believes...that incitement has played and continues to play a very significant role in the genesis, escalation and recurrence of ethnic conflicts..."

Women

Domestic violence against women was a serious and widespread problem. Press accounts of such violence, sometimes resulting in the death of a woman, were reported frequently. According to the Government, 1,199 cases of rape were reported to the police in Nairobi during 2001, compared with 1,148 in 2000. The available statistics probably underreport the number of incidents, as social mores discouraged women from going outside their families or ethnic groups to report sexual abuse. According to a study by The Center for Human Rights and Democracy in Eldoret, 60 percent of rape cases in the North Rift region were not reported because women feared unfair treatment by police. A 2001 study by Kangemi Women Empowerment Centre, a small group based in one of Nairobi's largest low-income communities, claimed that three out of five women in the community were victims of domestic violence, and that one-third of the women had suffered sexual abuse in 2001. The study noted that the abused women rarely reported the violations, because they believed perpetrators would not be punished, and no protective or remedial action would be taken. Although the validity of these two studies was unproven, the basic figures supported other published figures as well as numerous press accounts and anecdotal evidence.

Since 1994 FIDA has collaborated with the police to stop domestic violence. Police typically viewed violence against women as a family matter, not a crime. FIDA has trained more than 500 police officers about gender issues. The organization, as part of its ongoing police sensitization project, also had developed a curriculum on dealing with gender-based violence that was to be included in the training of new police recruits.

The law carries penalties of up to life imprisonment for rape, although actual sentences usually were no more than 10 years. The rate of prosecution remained low because of cultural inhibitions against publicly discussing sex, fear of retribution, disinclination of police to intervene in domestic disputes, and unavailability of doctors who otherwise might provide the necessary evidence for conviction. Moreover, wife beating was prevalent and largely condoned by much of society. Traditional culture permitted a man to discipline his wife by physical means and was ambivalent about the seriousness of spousal rape. There was no law specifically prohibiting spousal rape. The media continued to report extensively on the prevalence of spousal and domestic abuse.

There continued to be incidents of rape of refugee Somali women at the Dadaab refugee camps (see Section 2.d.). According to the UNHCR, refugee women reported 70 rapes during the first 11 months of 2001, compared with 82 rapes in 2000.

FGM, also referred to as "female genital cutting," was practiced by certain ethnic groups and remained widespread, particularly in rural areas. The press reported severe injuries to several girls from the practice of FGM. On June 7, the Daily Nation reported that a 28-year-old woman was forcibly circumcised in Meru by her in-laws, leaving her seriously injured. Two of her in-laws were arrested and charged, but the woman who performed the excision escaped. According to a December 2001 report by the Government and UNICEF, 38 percent of women nationwide have undergone FGM. According to the women's rights organization Maendeleo Ya Wanawake ("Development of Women" in Swahili), the percentage of girls undergoing the procedure was as high as 80 to 90 percent in some districts of Eastern, Nyanza, and Rift Valley provinces. FGM usually was performed at an early age. President Moi has issued two presidential decrees banning FGM, and the Government prohibited government-controlled hospitals and clinics from practicing it. In December 2001, the Children's Bill, which bans FGM on girls under the age of 18, was passed and signed into law. Various communities have instituted "no cut" initiation rites for girls as an alternative to FGM. Family Planning Association of Kenya (FPAK) established such a rite called Ntanira na Kithomo (initiate me through education) in Nyambene in Meru and some Marakwet and Maasai communities also have instituted similar rites of passage. According to the FPAK, its program contributed to a 13 percent decline in the prevalence of FGM in Meru North District. However, despite the December 2001 ban on the practice and the emergence of alternative rites of passage, FGM still was practiced widely across the country. In April 16 girls sought refuge at the Centre for Human Rights and Democracy (CHRD) in Eldoret to escape undergoing FGM. They were among a group of 350 girls who had participated in an alternative rite of passage in December 2001 and now were being threatened by family members with FGM. CHRD secured a court injunction against the girls' parents preventing them from forcing the girls to undergo FGM. The executive director of CHRD, Ken Wafula, said that 1,300 girls underwent FGM in Marakwet in December 2001. This statistic was in sharp contrast to those compiled in 1999, when only 169 girls were subjected to FGM in the same district.

Prostitution is illegal; however, it was a problem and was perpetuated by poverty. Prostitution has contributed to the spread of HIV/AIDS, which affected approximately 13 percent of the population. In June the U.N. Program on HIV/AIDS (UNAIDS) reported that 30 percent of pregnant women in Embu District in Eastern Province were HIV-positive, making it the area with the highest rate of infection in the country.

Women experienced a wide range of discriminatory practices, limiting their political and economic rights and relegating them to second-class citizenship. The Constitution extends equal protection of rights and freedoms to men and women, but only in 1997 was the Constitution amended to include a specific prohibition of discrimination on grounds of gender. However, constitutional provisions allow only males to transmit automatically citizenship to their children. The Government has not passed enabling legislation to implement domestically international conventions on women's rights; however, the Attorney General submitted to Parliament three bills designed to protect women's rights--The Domestic Violence (Family Protection) Bill; The National Commission on Gender and Development Bill; and The Equality Bill--all were debated but were pending at year's end. The Task Force on Laws Relating to Women, established by the Attorney General in 1993, produced a draft report; however, it was not published by year's end.

Women continued to face both legal and de facto discrimination in other areas. For example, a married woman legally was required to obtain the consent of her husband before obtaining a national identity card or a passport (see Section 2.d.).

The Law of Succession, which governs inheritance rights, provides for equal consideration of male and female children; however, in practice most inheritance problems did not come before the courts. Women often were

excluded from inheritance settlements, particularly if married, or given smaller shares than male claimants were given. Moreover, a widow cannot be the sole administrator of her husband's estate unless she has her children's consent. Most customary law disadvantages women, particularly in property rights and inheritance. For example, under the customary law of most ethnic groups, a woman cannot inherit land and must live on the land as a guest of males who were relatives by blood or marriage. Wife inheritance was practiced in some communities, which restricted a woman's right to choose her mate and placed her at risk of contracting a sexually transmitted disease such as HIV/AIDS.

Women made up approximately 75 percent of the agricultural work force and had become active in urban small businesses. Nonetheless, the average monthly income of women was approximately two-thirds that of men, and women held only an estimated 5 percent of land titles. Women had difficulty moving into nontraditional fields, were promoted more slowly than men, and were laid off more. Societal discrimination was most apparent in rural areas.

Maendeleo Ya Wanawake, the nation's best-known women's rights and welfare organization, was established as a nonpolitical NGO during the colonial era, but was aligned closely with the ruling KANU party and consequently suffered diminished credibility as an independent body. A growing number of women's organizations were active in the field of women's rights, including FIDA, the National Council of Women of Kenya, the National Commission on the Status of Women, the Education Center for Women in Democracy, and the League of Kenyan Women Voters.

The Women's Political Caucus, formed in 1997, continued to lobby over matters of concern to women and to increase the influence of women on government policy. A bill was introduced in 2000 to create a number of parliamentary seats reserved for women; however, no action was taken on the legislation by year's end.

Children

The system of free education in the early years of the country's independence gave way to a "cost-sharing" education system in which students paid both tuition and other costs. These were a heavy burden on most families, and at year's end the newly elected Government promised to eliminate tuition fees for primary education. Although the law mandates that schooling be available for all children up through grade 12 and that it be compulsory, there was a very high dropout rate in part because of large educational expenses. The East African Standard newspaper reported in March 2001 that 8,000 girls dropped out of school each year due to pregnancy. There were an estimated 4 million children between 6 and 14 years of age who were out of school. On September 25, while initiating the National Council for Children's Services, Minister for Home Affairs William Ruto declared that "Three million children who should be in school were not and 8.6 million more do not have access to basic needs." The legally mandated universal schooling also did not occur in practice because of a shortage of schools. Levels of education for boys and girls differed widely. Although the number of boys and girls in school roughly was equal at the primary level, boys substantially outnumbered girls in higher education. Rural families were more reluctant to invest in educating girls than in educating boys, especially at the higher levels. Seventy percent of illiterate persons in the country were female.

Corporal punishment of students was banned formally in 2001; however, it did not cease completely in practice. On February 25, a teacher beat a 13-year-old student to death at Nyamarambe Primary School, Kehancha Division for failing a math test. The teacher fled the scene and was not located by year's end. In March a teacher at Tabaka Boys Boarding School, in Gucha district, beat a student unconscious, reportedly for not cutting his hair. The teacher was detained after turning himself into police.

The health care system for school children, which once provided periodic medical checkups and free milk, was defunct. In December 2001, Parliament passed the Children's Bill, which has provisions to ensure children's welfare and provide them with basic rights; however, these provisions were not implemented by year's end.

FGM was practiced commonly on young girls by certain ethnic groups, particularly in rural areas (see Section 5, Women).

Economic displacement and the spread of HIV/AIDS continued to affect the problem of homeless street children. The number of Nairobi's street children was more than 60,000 in 2000, an estimated 20 percent increase from 1999. In January the East African Standard reported on the growing problem of "street families" where entire nuclear families were living on the street due to a failing economy. The Standard also reported that there were an estimated 250,000 children living on the streets of the country's urban areas--primarily Nairobi, Mombasa, Kisumu and Nakuru--a figure that it said was a conservative estimate. These children often were involved in theft, drug trafficking, assault, trespassing, and property damage. Street children faced harassment as well as physical and sexual abuse from the police and within the juvenile justice system. They were held in extremely harsh conditions

in crowded police station cells, often without toilets or bedding, with little food, and inadequate supplies. They often were incarcerated with adults and frequently beaten by police (see Section 1.c.).

Child rape and molestation continued. There were frequent press reports of rapes of young girls by middle-aged or older rapists. There were repeated reports of molestation or rape of children by schoolteachers, mostly in rural areas. Legally, a man does not "rape" a girl under age 14 if he has sexual intercourse with her against her will; he commits the lesser offense of "defilement." The penalty for the felony of rape can be life imprisonment, while the penalty for defilement was up to 5 years' imprisonment. Men convicted of rape normally received prison sentences of between 5 and 20 years, plus several strokes of the cane. Child marriages were a problem, and the issue frequently was highlighted in newspapers.

Child prostitution was a major problem (see Section 6.f.).

Persons with Disabilities

Government policies do not discriminate against persons with disabilities in employment, education, or in the provision of other state services; however, persons with disabilities frequently were denied drivers' licenses. There were no mandated provisions of accessibility for persons with disabilities to public buildings or transportation. KTN broadcast some news programs in sign language. A bill to address problems faced by persons with disabilities was pending before Parliament prior to its October dissolution; at year's end, it was unclear whether it would be taken up by the new Parliament. The bill aims to outlaw discrimination against persons with disabilities and to assist them through new requirements such as mandatory education for children with disabilities.

In August 2001, the African Medical Research Foundation of Kenya (AMREF) released a study entitled "Sexual Abuse of People with Learning Disabilities." According to the study, there was a high prevalence of rape of persons with disabilities.

National/Racial/Ethnic Minorities

The country's population was divided into more than 40 ethnic groups, among which there were frequent and credible allegations of discrimination, as well as frequent interethnic violence. In general each ethnic group has a distinct primary language and was concentrated in a distinct region; however, the languages of some groups were very similar to the languages of related ethnic groups. In private business and in the public sector, members of virtually all ethnic groups commonly discriminated in favor of other members of the same group when able to do so. Neighborhoods in large cities tended to be segregated ethnically, although interethnic marriage has become fairly common in urban areas. Political cleavages tended to correlate with ethnic cleavages (see Section 3).

Unofficial results of the 1999 census indicated that the Kikuyu constitute 21 percent of the population, and the Luhya were estimated to constitute 16 percent, the Kalenjin 12 percent, the Luo 11 percent, and the Kamba 10 percent of the population.

Ethnic-regional differences continued to pose obstacles to political and economic liberalization. Members of President Moi's Kalenjin ethnic group (a coalition of nine small ethnic groups) and other traditionally pastoral Nilotic ethnic groups were represented disproportionately and held key positions in the Government, the ruling KANU party, the GSU, and the Presidential Escort. Many members of these groups appeared to believe that economic and political liberalization would likely harm their groups, and to favor other groups. The Kikuyu and the closely related Kamba, Meru, and Embu groups make up more than one-third of the country's population; members of these groups also dominated much of private commerce and industry and have tended to support opposition parties since they were legalized in 1992. The Kikuyu, the largest, best-educated, and most prosperous ethnic group, dominated the country under its first president, Jomo Kenyatta, a Kikuyu.

Members of the coastal Bajuni, Mijikenda, and Digo communities accused the Government of denying them their rights to land, and of favoring members of inland "up-country" ethnic groups, who migrated to the coast largely during the period when Kenyatta was president.

On October 18, under judicial pressure, the Government released the "Akiwumi Report" on ethnic clashes between 1991 and 1998. The report indicted public officials from petty policemen to senior officials and cite political factors as the primary cause of ethnic violence that resulted in more than a 1,000 deaths during the 1990's, disrupted two general elections, and displaced hundreds of thousands of persons. The report detailed a pattern of local authorities failing to act on warnings of impending violence, failing to intervene to stop violence while it was occurring, and failing to pursue known perpetrators. It also accused senior officials of giving inflammatory

speeches in volatile areas and in some cases, financing persons responsible for violence. The Attorney General claimed that the report was biased, and some opposition leaders claimed it had been changed to obscure the role of the State House; however, the report largely was recognized as a significant document.

Attacks and revenge counterattacks continued between ethnic groups throughout the country, resulting in an average of 50 to 75 deaths per month. Significant conflict occurred between ethnic Pokots and Marakwets, between Pokots and Turkanas, between Turkanas and Samburus, between Maasais and Kisiis, between Orma and Pokomos, between Boranas and Somalis, and among various Somali clans. Many factors contributed to interethnic conflicts, including the proliferation of guns, the commercialization of traditional cattle rustling, the weakening of state authority, the emergence of local militia leaders, the development of a modern warrior/bandit culture (distinct from the traditional culture), irresponsible local political leadership, shrinking economic prospects for affected groups, a regional drought, and the inability or unwillingness of security forces to stem the violence.

A number of persons were killed during ethnic fighting between the Kisii and Maasai communities in the southwestern part of the country. In April five persons were killed a result of cattle rustling along the Gucha/Tans Mara border. Government officials in the region reportedly banned the carrying of weapons such as arrows and machetes following the incident; however, on October 6, suspected Maasai youth raided several homesteads for cattle in Gucha again near the Gucha/Trans Mara border, killing three Kisii men in the process. They reportedly were armed with homemade guns and other weapons. A number of other residents were injured and several villagers fled their homes fearing renewed attacks. It was not known whether the perpetrators of the attack were apprehended by year's end.

There were also numerous violent clashes between other ethnic groups in various regions of the country during the year. On February 16, armed cattle rustlers reportedly from Turkana district killed four Pokot herdsmen in Nasolot village of West Pokot district. Two ethnic Borana were killed by Samburu raiders who made off with 800 head of cattle on April 18. The attackers reportedly raided four villages in the Merti Division of Isiolo district. In September ethnic Turkanas and Boranas clashed and more than 20 persons were killed. There were no known arrests made in any of these cases by year's end.

There was no known action taken in the following 2001 cases: The May raid in which Maasai raiders shot and killed four Kisii youths; the May killing of six Kisii in attacks that some residents claimed were instigated by the police; and the July killing by security officers of a primary school teacher during a fight between Kisii and Maasai youths (see Section 1.a.).

Clashes in 2001 between the Orma and Pokomo communities in Tana River District in Coast Province also claimed many lives. In March 2001, 20 schools were closed after 13 persons were killed in 2 weeks of fighting between the communities. The schools have resumed classes; however, it was unknown whether any action had been taken against perpetrators of the violence by year's end.

The Government has singled out the overwhelmingly Muslim ethnic Somalis as the only group whose members were required to carry an additional form of identification to prove that they were citizens. The continued presence of and at times criminal activities by Somali refugees have exacerbated the problems faced by citizens of Somali ethnicity (see Sections 2.c. and 2.d.).

There was widespread resentment among citizens of African ethnicity toward Asians living in the country. The Asian community constituted between 0.5 and 1 percent of the total population and consisted of second and third generation Asians with full citizenship and a smaller body of recent immigrants. Many persons of African descent resented those of Asian descent for their affluence, and for their reluctance to assimilate African culture and to employ blacks, particularly in management positions. They also saw Asians as taking jobs and commercial opportunities away from Africans. The involvement of some Asians in corrupt activities along with government officials further fueled popular resentment. Politicians, both opposition and ruling party, from time to time appealed to majority prejudices by attacking Asian citizens, accusing them of exploiting and usurping the natural inheritance of African citizens.

Section 6 Worker Rights

a. The Right of Association

The law provides that all workers are free to join unions of their choice; however, the Police Act prohibits members of the national police force from joining unions. Workers employed in export processing zone (EPZ) firms had the right to organize and bargain collectively; however, those who worked in many small firms in the EPZs face

dismissal if they joined unions. In December 2001, the Labor Commissioner registered the Union of Kenya Civil Servants (UKCS), which granted civil servants the right to join unions for the first time since 1980; however, laid-off civil servants did not receive the full severance package promised them by the Government. The law provides that as few as seven workers may establish a union, so long as the objectives of the union do not contravene the law and no union was representing the employees in question already.

Unions must apply to and be granted registration by the Government. The Government also may deregister a union, but the Registrar of Trade Unions must give the union 60 days to challenge the deregistration notice. An appeal of the Registrar's final decision may be brought before the High Court.

There were 41 unions representing approximately 600,000 workers, approximately one-third of the country's formal-sector work force. All but 5 of these unions, representing approximately 250,000 workers, were affiliated with the one approved national federation--the Central Organization of Trade Unions (COTU). The largest non-COTU union was the 240,000-member Kenya National Union of Teachers (KNUT). The COTU leadership generally did not pursue workers' rights vigorously; however, most affiliates chose to remain rather than give up its even minimal support. As a result, most union activity took place at the shop steward level and not at the industrial level where most labor-related decisions were made. This placed the average worker at a disadvantage in disputes with management.

The Government created COTU in 1965 as the successor to the Kenya Federation of Labor and the Kenya African Workers' Congress. COTU's constitution gave the President the power to remove COTU's three senior leaders from office and grants nonvoting membership on the executive board to representatives of the Ministry of Labor and of KANU. Although the board was composed of the leadership of affiliated unions, it was common for political parties, especially KANU, to provide funding and other support for the election of senior union officials.

In August 2001, Frances Atwoli, the leader of the Agriculture and Plantation Workers Union, was elected Secretary General of COTU. Atwoli, who replaced the incumbent of 15 years, pledged to end corruption within the union and to remove the provisions in COTU's constitution that grant seats on COTU's board to government and ruling party officials.

Workers' rights groups continued to raise the general problem of the Government's harshness towards labor with the International Labor Organization's (ILO) Committee on Freedom of Association. In June 2001, a tripartite Kenyan Task Force on Labor Law Reform was established and was committed to revising the labor law. In August 2001, members agreed that the legal loophole that allowed the practice of barring union organizers from EPZ factory premises must be closed; however, it was not submitted to Parliament for action by year's end.

The law prohibits employers from intimidating workers but antiunion discrimination existed. Employees wrongfully dismissed for union activities can take their cases to the Industrial Court, and many have been awarded damages in the form of back pay--reinstatement was not a common remedy. More often aggrieved workers have found alternative employment in the lengthy period prior to the hearing of their cases.

The COTU was affiliated internationally with both the Organization of African Trade Union Unity and the International Confederation of Free Trade Unions. Many of its affiliates were linked to international trade secretariats.

b. The Right to Organize and Bargain Collectively

While not having the force of law, the Industrial Relations Charter, executed by the Government, COTU, and the Federation of Kenya Employers, gives workers the right to engage in legitimate trade union organizational activities. Both the Trade Disputes Act and the charter authorize collective bargaining between unions and employers. Wages and conditions of employment were established in negotiations between unions and management. The Government permits wage increases of up to 100 percent and renegotiation of collective agreements; however, the law allows employers in ailing industries to dismiss workers regardless of the provisions of their collective bargaining agreements. Collective bargaining agreements must be registered with the Industrial Court in order to ensure adherence to these guidelines. In 2001 the UKCS, banned in 1980, was reregistered, which resolved a longstanding International Labor Organization (ILO) complaint against the country. In theory the UKCS had the right to negotiate the terms and conditions of civil service employment; however, it has not done so. It could be difficult for the UKCS to renegotiate conditions of employment because the interim national union officials were not civil servants.

The law permits workers to strike; however, this right was restricted. For example, 21 days must elapse following the submission of a letter to the Minister of Labor before a strike can occur. Members of the military services,

police, prison guards, and the National Youth Service are prohibited from striking. Other civil servants, like their private sector counterparts, can strike following the 21-day notice period (28 days if it was an essential service, such as water, health, education, or air traffic control). During this 21-day period, the Minister may mediate the dispute, nominate an arbitrator, or refer the matter to the Industrial Court, a body of five judges appointed by the President, for binding arbitration. Once a dispute is referred to mediation, fact-finding, or arbitration, any subsequent strike is illegal. Moreover, the act gives the Minister of Labor broad discretionary power to determine the legality of any strike.

In past years, the Minister used this power to declare strikes by bank workers and teachers illegal, although the required notice had been given. During the year, the Ministry of Labor declared a number of strikes illegal, including a strike by air traffic controllers, a strike by the Kenya National Union of Teachers (KNUT), and a nurses strike. In 1997 the KNUT called a nationwide strike, which the Government quickly settled with pay increases of more than 200 percent spread over more than 5 years, rather than risk antagonizing the influential teachers before the election. The Government's failure to implement the second of the promised pay hikes resulted in a 1998 KNUT strike, which the Government declared illegal. The strike ended after 15 days when the Government refused to renegotiate. In 2000 Dr. Gitu, the Ministry of Labor's Permanent Secretary, admitted that the Government should not have agreed to pay the 1997 salary package for teachers; he was subsequently fired. The Government and the KNUT remained in sporadic negotiation regarding the implementation of the agreed-upon salaries; however, by September the contracted pay hikes were not paid, prompting KNUT to strike again. In response to the strike, the Government took steps to rescind the 1997 pay increase, withhold teacher salaries, and cancel union members' automatic contributions to KNUT. The KNUT remained resolute in their demands, and COTU threatened a nationwide general strike if the Government failed to pay the teachers. The High Court temporarily blocked the Government's reportedly illegal revocation of the 1997 salary agreement pending a full hearing on the dispute. The strike ended on October 20, when KNUT leaders and the Government agreed to postpone negotiations for the benefit of students who were to sit for their national exams on October 22. A new agreement on the implementation or revision of the 1997 salary package was not expected until 2003. The agreement with KNUT committed the Government to pay the remaining four phases of the salary increase and arrears of 150 to 200 percent by July 1, 2003, but only after a subcommittee was appointed to work out the payment schedule. The committee finalized its report in November, and the Minister of Education officially published it in December. The agreement also committed the Government not to persecute teachers for taking part in the strike and rescinded the cancellation of the check-off system for payment of union dues.

In 2001, the last year for which statistics were available, there were 21 strikes involving 4,640 workers and resulting in the loss of 12,828 cumulative days of work. Most strikes were due to unpaid wage arrears and involved local government and manufacturing workers. Some of these strikes involved violence on the part of the strikers, usually in an attempt to keep other workers off the job. In some instances, strikers also were dispersed forcibly by the Government. During the year, there were a number of strikes in which the Government responded forcibly against both associations and unions during threatened or actual strikes. The Government fired and replaced striking air traffic controllers, ordered striking nurses back to work, and skirmished with the striking KNUT.

With the exception of the Factories Act, all labor laws, including the right to organize and bargain collectively, apply in the EPZs (see Section 6.e.). However, the EPZ Authority and the Government grant many exemptions to applicable laws. For example, the Government waived aspects of the law that prevent women from working in industrial activities at night. In practice workers in EPZ firms may face dismissal if they join unions (see Section 6.a.). In August 2001, the Textile and Tailors Union alleged widespread intimidation of workers seeking to unionize at a foreign-owned EPZ firm. The employer stated that the union had forged the signatures of workers supporting unionization, and the leader of the union was arrested. More than 1 year later the case still was pending before the court and was not expected to be heard until 2003.

c. Prohibition of Forced or Bonded Labor

The Constitution proscribes slavery, servitude, and forced and bonded labor, including by children; however, under the Chiefs' Authority Act, a local authority can require persons to perform community services in an emergency. The ILO Committee of Experts has found that these and other provisions of the law contravene ILO Conventions 29 and 105 concerning forced labor. The law remains in effect; however, the Government overruled attempts by chiefs to institute arbitrary community service during the year. Some observers alleged that prison officials used free prison labor for personal profit (see Section 1.c.). During the year, there were reports, especially in rural areas, of children being loaned out as workers to pay off family debts.

d. Status of Child Labor Practices and Minimum Age for Employment

The employment in industry of children under the age of 16 is illegal; however, the law does not apply to the

agricultural sector, where approximately 70 percent of the labor force was employed, nor to children serving as apprentices under the terms of the Industrial Training Act. Ministry of Labor officers nominally enforced the minimum age statute, and the Government was making efforts to eliminate child labor, working closely with the COTU and the ILO's International Program for the Elimination of Child Labor. According to a survey by the Central Bureau of Statistics, there were 1.9 million children who worked in the country (primarily in the agricultural sector) 1.3 million of whom were employed full time and 600,000 of whom worked while attending school; however, the number of child laborers could be as high as 5 million. The Central Bureau of Statistics also estimated that 18 percent of working children had no formal education. The problem has received considerable media attention for several years.

Children often worked as domestic servants in private homes. There were many instances of children working in the informal sector, mostly in family businesses. Children usually assisted parents on family plots rather than seek employment on their own. However, deteriorating economic conditions and the effects of the HIV/AIDS pandemic have given rise to more child labor in the informal sector, which was difficult to monitor and control. During the year, there were reports of abuse of children serving as domestic employees. A significant number of workers on tea, coffee, sugar, and rice plantations were children, who usually worked in family units. In addition, a large number of underage children were active in the sex industry (see Section 6.f.) and in the salt harvesting industry along the coast. In view of the high levels of adult unemployment and underemployment, the employment of children in the formal industrial wage sector in violation of the Employment Act was less common but not unknown.

The Government took several meaningful steps in 2001 to combat the worst forms of child labor, including the establishment of a Child Labor Division in the Ministry of Labor in September and the enactment of the Children's Act in December. A draft strategic plan to implement the Act was prepared and the focus has been on sensitization of employers but not investigative and law enforcement. An ILO-sponsored COTU program has facilitated the return of 562 child laborers to school and trained 1,100 shop stewards on the prevention of child labor since 1997. Many NGOs also were active in this area; an NGO working with COTU and the Agriculture and Plantation Workers Union has facilitated the return of another 962 child laborers to school since 1999.

Forced labor by children occurred (see Section 6.c.).

e. Acceptable Conditions of Work

The legal minimum wage for blue-collar workers in the wage sector has 12 separate scales, varying by location, age, and skill level; however, in many industries the minimum wage equaled the maximum wage. The lowest minimum wage was \$42 (3,288 Kenyan shillings) per month in the largest urban areas and \$25 (1,535 Kenyan shillings) in rural areas. Workers covered by a collective bargaining agreement generally received a better wage and benefit package than those not covered, including an average of \$110 (8,646 Kenyan shillings) per month, a mandated housing allowance of approximately \$20 (1,595 Kenyan shillings), and traditional benefits such as a transport allowance or a "house owner occupier" allowance.

The minimum wage was insufficient to provide a decent standard of living for a worker and family. Most workers relied on second jobs, subsistence farming, informal sector opportunities, or the extended family for additional support.

The law limits the normal workweek to 52 hours, although nighttime employees may be employed for up to 60 hours per week. Some categories of workers have a shorter workweek. As was the case with respect to minimum wage limitations, the law specifically excludes agricultural workers. An employee in the nonagricultural sector was entitled to 1 rest day per week. There also were provisions for 21 days of annual leave and sick leave. The law also provides that the total hours worked (regular time plus overtime) in any 2-week period for night workers not exceed 144 hours; the limit was 120 hours for other workers. The Ministry of Labor was responsible for enforcing these regulations, and there were few reports of violations. Workers in some enterprises claimed that employers forced them to work extra hours without overtime pay.

The Factories Act sets forth detailed health and safety standards; however, a 1990 decree by the Minister of Finance excludes EPZs from the Act's provisions (see Section 6.b.). The Ministry of Labor's Directorate of Occupational Health and Safety Services (DOHSS) has the authority to inspect factories and work sites; however, the DOHSS lacked statutory authority to inspect factories in the EPZs. The Kenyan Task Force on Labor Law Reform noted in an August 2001 workshop that the 1991 notice should be revoked, and the Permanent Secretaries for Labor and Finance have begun the revocation process. Labor and NGOs continued to criticize health and safety conditions in the EPZs. For example, during the year, NGOs have highlighted problems in the cut flower farming sector. The KHRC sponsored a national "Flower Week" to call attention to problems on flower farms. They alleged serious violations of worker rights, including use of hazardous pesticides and fertilizers without adequate protection, low wages, and casualization (hiring long term "seasonal workers" without providing any benefits or job

security.)

The 65 DOHSS health and safety inspectors may issue notices enjoining employers from practices or activities that involved a risk of serious personal injury. Such notices can be appealed to the Factories Appeals Court, a body of four members, one of whom must be a High Court judge. The number of factory inspections has increased significantly since 1992. The law stipulates that factories that employ at least 20 persons have a health and safety committee with representation from workers. However, according to the Government, less than half of even the very largest factories had instituted health and safety committees. Workers were not forced by law to remain in hazardous conditions; however, many would be reluctant to remove themselves because of the high unemployment problem and the resulting risk of loss of their job.

Foreign workers were covered by the same legislation and work rules as citizens. The law protects both legal and illegal foreign workers.

f. Trafficking in Persons

The law does not prohibit trafficking in persons, and there were reports that persons were trafficked to, from, or within the country.

Child prostitution was a major problem in Nairobi and Mombasa, often connected with the tourist trade. Child prostitution has grown considerably due both to economic contraction and to the increase in the number of children orphaned because of the spread of HIV/AIDS. During the year, the ILO reported that 30,000 girls under the age of 19 years were engaged in prostitution in the country.

In January 2001, authorities arrested and deported six Sudanese on suspicion of running an operation to smuggle Kenyans to the Middle East for work. In previous years, there were unverified reports that citizens were trafficked to Saudi Arabia under the guise of employment opportunities, and that South Asians were trafficked into the country to work in sweatshops. In 1999 the People newspaper published an article about the experiences of several Kenyan women who had been misled into accepting jobs in the Middle East, only to work in what they described as "modern slavery."

The Government did not have any programs that specifically targeted trafficking; however, several NGOs provided services that could benefit persons who were victims of trafficking.